

# The state of youth justice 2020

An overview of trends and developments

Dr Tim Bateman\*



\* The author has produced the report at the behest of the NAYJ Board of Trustees who have approved and adopted the contents.

The NAYJ is a registered charity (no. 1138177) and membership organisation campaigning for the rights of – and justice for – children in trouble with the law.

[www.thenayj.org.uk](http://www.thenayj.org.uk)

# Foreword

---

It is a privilege to write this Foreword to The State of Youth Justice 2020. This third instalment in the series, which began in 2015, is even more impressive than its predecessors. Our gratitude to Tim for such an in-depth analysis that draws on his experience of research, policy and practice and contributes considerably to our knowledge and understanding of the youth justice system in England and Wales.

Two developments this year are so significant that they impact on our understandings of the state of the youth justice system and its wider societal context. The first is the global pandemic of the Covid-19 virus, the second is the heightened prominence of the Black Lives Matter movement in social and political discourse.

As noted in the report itself (Chapters 1 and 8 in particular), many of the findings relate to the experiences of children prior to the advent of the Covid-19 pandemic. Whilst it is too early to assess the full implications for children in prison, a number of consequences are already clear. In particular, changes to regimes to accommodate social distancing have already had disturbing consequences. In two of three Young Offenders Institutions (YOIs) inspected, it was confirmed that children's educational activities were limited to worksheets in their cells; the third establishment was able to provide just two hours face-to-face education on school days. The time children spent out of cell varied from three hours a day to just 40 minutes. Contact with the outside world has been curtailed, with the consequence that children no longer have any face-to-face interaction with families or friends, nor visits from social workers, YOT staff or lawyers. We are storing up a range of problems that will not be easily dealt with later.

Whilst there has been a welcome reduction in the number of children entering the youth justice system and subject to its interventions, the reductions have not benefitted all children equally. As the system has contracted over the last decade, the overrepresentation of minority ethnic children, particularly Black and mixed heritage children, has become more pronounced. The disproportionality increases as children move deeper into the system: more than half of those currently deprived of their liberty derive from a minority background. Children in care are also more likely than their peers in the general population to be criminalised. Inequalities are evident too in the treatment of children from different backgrounds when they are detained in the secure estate. Concrete action by government and others to address

these issues has been extremely limited, with little progress to celebrate.

These issues are not new for the youth justice system, and indeed have been highlighted by the Association in previous years. The pandemic and wider social developments offer opportunities for the government to see matters differently and take alternative action. This publication focuses very much on children affected by the youth justice system. It is more apparent than ever that we need to think more about how the youth justice system interacts with the rest of the criminal system, wider social institutions and indeed society in England and Wales as a whole. It is important not to divorce youth justice from broader developments that affect poor and disadvantaged children across our countries in a variety of ways.

On behalf of the Board of Trustees at The NAYJ, we are delighted to be able to make such a useful contribution freely available on our website. This is with thanks to the contributions of our members over the years. As volunteers, we are very pleased that your contributions help the charity's publications remain independent and free from government funding. With your support, we continue to promote the rights of, and justice for, children involved in the youth justice system.

A handwritten signature in black ink, appearing to read 'Ross Little', with a long horizontal flourish extending to the right.

**Ross Little**

Deputy Chair, Board of Trustees,  
The National Association for Youth Justice

# Contents

---

## Chapter 1 Child first youth justice: rhetoric or reality? 2

The context for the report .....	2
What about decriminalisation and decarceration? .....	7
Youth justice is not an island.....	9
Purpose of the report.....	11

## Chapter 2 Youth crime is falling. By how much? How do we know? 12

What victims report and police record .....	12
Public perceptions .....	16
Smells like teen spirit? – the decline in detected youth crime .....	18
Maybe it was me - self-reported offending .....	19

## Chapter 3 Making sense of patterns in detected youth crime 22

Free falling ... ..	22
Better out than in ... ..	29

## Chapter 4 This is what youth crime looks like 43

There's a lot of it about.....	33
Point blank .....	35
Changes .....	40

## Chapter 5 This is what a child in conflict with the law looks like 43

What's a poor child to do? .....	43
Worth the risk? .....	47
Age: Now the years are rolling by me .....	51
Gender: it's a boy's world .....	53
Race and criminalisation .....	60

## Chapter 6 Pre-court formality and informality 66

Watching the detectives .....	67
Further filters .....	75
It's formal but it's not court .....	81

## Chapter 7 Here comes the judge 87

The framework for trial (and error) .....	87
Sentencing principles or principled sentencing? .....	93
Showing conviction .....	95

## Chapter 8 Prison blues 102

Custodial trends .....	102
No estate for children .....	110

## Chapter 9 What's counted or what counts? Reoffending as success or failure 119

## Chapter 10 To the end 124

## References 128

## Chapter 1

# Child first youth justice: rhetoric or reality?<sup>1</sup>

### ● The context for the report

In 2017, the *National Association for Youth Justice* (NAYJ) characterised the government's response to the Review of Youth Justice, undertaken by Charlie Taylor (2016), and published the previous year, as a '*missed opportunity*' (Bateman, 2017:3). While welcoming the continued decline in the number of children subject to formal youth justice proceedings, and the fall in child imprisonment, the Association registered a number of concerns, including the following:

- Consideration of the age of criminal responsibility had been explicitly excluded from the review
- Taylor's proposal for the establishment of Children's Panels to determine what action would be required to address the child's behaviour, in lieu of the current system of youth court sentencing, was met with an equivocal commitment on the part of the government to consider how the principles underlying the review's recommendations in this regard might be met within '*the current framework*' (Ministry of Justice, 2016:21), a framework fundamentally based around the imposition of orders by a criminal court
- The government accepted, in principle, Taylor's (2016: 37) finding that the secure estate for children is in need of '*fundamental change*' and that young offender institutions (YOIs) and secure training centres (STCs) should be replaced by a network of 'secure schools', but (as of September 2017), little progress had been made towards establishing the two pilots of these new establishments promised by the government.

Astonishingly, progress in the intervening period in relation to all three issues has been close to negligible. Successive attempts, by Lord Dholakia, to raise the minimum age of criminal responsibility, by way of a Private Member's Bill, have fallen due to government opposition and a lack of Parliamentary time being allocated to the issue. There is, moreover, no evidence that the government has taken any steps to consider how the Taylor review principles might be integrated into the sentencing framework.

A tendering exercise in respect of a single pilot secure school pilot has been conducted, and Oasis, a registered charity best known for running a chain of academies, has been confirmed as the preferred operator of the new establishment (Ministry of Justice, 2019a). The pilot was scheduled to commence in late 2020 on the site of Medway Secure Training Centre in Kent. It has since become clear, however, that the planned opening will be subject to considerable delay. In November 2019, the government acknowledged '*complex issues*' made it unlikely that the target date would be met (Puffett, 2019). More recently, it has emerged that there are technical difficulties associated with the proposed legal status of the institution, which is intended to function both as an academy and a secure children's home (SCH). The Charity

---

<sup>1</sup> The author wishes to thank Pippa Goodfellow and Ross Little for comments on an earlier draft of the report. Thanks are also due to Anna Donovan for design and layout and to Barry Anderson for copy editing

Commission has also questioned whether it is appropriate for a charity to be the operator of an establishment whose purpose is the punishment of children. In a written response to Frances Crook, Chief Executive of the Howard League, dated 3 April, 2020, responding to her concerns that *'incarcerating children was not a charitable objective'*, the Commission confirmed that they did not think that: *'the operation of a secure school [could] be exclusively charitable'* (cited in Crook, 2020). As at March 2020, none of the planned building works had commenced, and no staff recruitment had taken place (Lepper, 2020). On 17 June 2020, Lucy Frazer, Minister of State for Justice, wrote to the Justice Select Committee indicating that the government was *'working towards opening the first secure school in 2022'* (Frazer, 2020: 1).

There are in addition, legitimate, concerns over the selection of Medway secure training centre as the site for the pilot, given the revelations in 2016 of staff physically and emotionally abusing children detained there and continued poor performance in the period since. In February 2019, an open letter to the Ministers responsible for child prisons and child protection argued that:

*'The legacy of failure within the centre, and among national and local systems meant to protect children there, means it is not safe for the Government to continue with plans to make it an experimental secure school'* (Willow et al, 2019:1).

In its response, the government noted practical advantages of the Medway site, in particular the fact that it would not be necessary to go through a *'potentially protracted and expensive planning application'* (Argar, 2019:3) and reaffirmed its intention to house the pilot in that location. More recently, however, as part of the Ministry of Justice's response to the Covid 19 crisis, Medway has been re-designated, albeit temporarily, as part of the adult prison estate, casting further uncertainty as to when it might be ready for development as a secure school. The fact that these premises have been deemed suitable for use as an adult prison, also raises questions in relation to the suitability of the site as a place to care for children.

No site for the second pilot has been identified, suggesting a lack of urgency on the part of the government to replace YOIs and STCs, in spite of a confirmation that this remains a *'long-term ambition'* (HM Government, 2019: 59). The NAYJ has been critical of the secure school model, arguing that children should be removed from penal institutions to secure children's homes rather than focus efforts on developing a fourth (and untested) type of custodial provision (Bateman, 2016). It has however continued to support calls for the prompt closure of STCs and YOIs (see for example, End Child Imprisonment, 2019). In this context, the government's inaction is particularly disappointing.

A further area of tension between Charlie Taylor's proposals and the government response was of a philosophical nature. While Taylor (2016:3) called for *'a shift in the way society, including central and local government, thinks about youth justice so that we see the child first and the offender second'*, the government's response made reference, in the first line, to the youth justice system's central role in *'punish[ing] crime'* (Ministry of Justice, 2016:3). On this issue, there have been some encouraging developments. Taylor was appointed as chair of the Youth Justice Board (YJB) in March 2017 (his tenure came to an end in March 2020). While he was in that role, the Board adopted a 'child first' model, first articulated in its Strategic Plan, published in 2018 (Youth Justice Board, 2018). This represented a considerable departure from the vision espoused four years earlier which committed the Board to achieving a youth justice system where:

- *'young people receive the support they need to lead crime-free lives and contribute positively to society*
- *more offenders are held to account for their actions and stop offending*
- *victims are better supported*
- *the public are protected'* (Youth Justice Board, 2014).

The publication of new National Standards in 2019, to replace those which had been in force since 2013, reaffirmed the YJB's commitment to a *child first* ethos and expanded on what this might mean for youth justice services. The Standards identify four principles which underpin the Board's child first approach:

- Prioritising the best interests of children and recognising their rights
- Building on children's strengths through future-oriented interventions to facilitate the development of pro-social identities that promotes empowerment and encourages desistance
- Encouraging active participation and working in a collaborative manner with children and their families
- Minimal intervention and maximising diversion to promote *'a childhood removed from the justice system'* (Ministry of Justice /Youth Justice Board, 2019:6).

This expansion falls short in a number of respects of the tenets of *child first* approach offered by academic commentators: it does not for example preclude punishment as a purpose of youth justice intervention; nor does it require the *'responsibilising'* of adults who make decisions about children in conflict with the law, rather than responsibilising the children themselves (Haines and Case, 2015: 76). As Haines and Drakeford (1998: xiii) pointed out more than two decades ago, a genuinely *child first* ethos would embrace values of maximum diversion and minimum intervention but would also require *'a much more proactive strategy'* that addressed the inequality and disadvantage that led to disproportionate levels of criminalisation for some groups of children by supporting them *'outside the criminal justice system as well as within it'*.

Nevertheless the specification of these principles is indicative of a clear distinction between the philosophy now espoused by the YJB and that which informed the previous iteration of the Standards: the statement of purpose in the 2013 edition, for instance, explained that the Standards were intended to ensure, among other things, that *'the public have confidence that children and young people subject to statutory supervision by youth justice services are fairly punished and are supported to reform their lives'* (Youth Justice Board, 2013:5).

Consistent with such a shift, there is a clear modification of terminology. The new Standards refer consistently to 'children' rather than 'young person'. References to 'risk' are minimised (eight occurrences as against 82 in 2013), and there is an increased focus on 'desistance', which appears 14 times in the latest Standards but did not merit a single mention in 2013. There are nonetheless some disappointments. For instance, the ministerial foreword continues to use the language of 'offenders' in spite of a subsequent acknowledgement that the *'child first, offender second principle ... runs throughout the Standards'* (Ministry of Justice /Youth Justice Board, 2019: 2), suggesting that the government has yet to appreciate fully the ramifications of the shift in philosophy.<sup>2</sup> Perhaps more importantly, while 'minimal intervention' is, as noted above, cited as an explicit principle, there is no further encouragement within the Standards themselves to practice directed towards such an

---

<sup>2</sup> Indeed, one of the potential problems with the Board's formulation of the ethos, is that it still allows for children being seen as 'offenders', albeit second

outcome. The section on out of court disposals does distinguish diversion into '*more suitable child-focussed systems*' from formal out of court sanctions but requires that the latter should be '*prompt, robust and deliver targeted and tailored interventions*' (Ministry of Justice / Youth Justice Board, 2019:8). The section on court work does require that a strategy should be in place to reduce the 'unnecessary' use of custodial remands but makes no comment on the desirability of minimising custodial sentencing and contains no guidance at all on the nature of pre-sentence report proposals, an important consideration in determining the level of child imprisonment (see for instance, Bateman, 2005). The more detailed guidance to which practitioners are directed by the Standards, similarly makes no mention of avoidance of custody, but simply requires that the:

*'report should address the type of sentence and requirements that are most likely to encourage a move to a pro-social identity and address risk of harm to others'.*

There is no explicit indication that rights, best interests or minimising levels of intervention should contribute to the decision-making process, as might be expected in guidance intended to direct child first practice (Youth Justice Board, 2019a). It should be acknowledged that, at the time of writing, the Youth Justice Board is in the process of revising Case Management Guidance and the revisions may address such criticisms, but the gap between policy and advice to practitioners in the interim is clearly problematic.

More generally, the tenor of the Standards is, the Board maintains, dictated by a desire to move from mandating a process-driven practice to encouraging one that is focused on outcomes. They aim to '*guide strategic and operational services*' understanding of what is expected, but does [sic] not prescribe how services should be designed and delivered' (Ministry of Justice / Youth Justice Board, 2019:3). Given that the overriding emphasis, of recent years, on process has tended to: side-line ethical considerations; undermine professional discretion; encourage risk aversion; and prioritise formulaic, risk-focussed, assessment and paperwork over establishing meaningful relationships with children (see for instance, Pitts, 2001a; Canton, 2007), such an aim is both understandable and laudable. The consequences of the shift are clearly evident in the Standards. They are much reduced in length: 25 pages compared to 50 in 2013. Timescales within which certain tasks must be completed, a substantial element of previous standards, no longer feature. These changes, though no doubt well intentioned, are not however altogether unproblematic.

To the extent that youth justice professionals have become accustomed to particular ways of working, simply removing some of the prescribed processes, without replacing them with positive alternative responses, might encourage a continuation of practice that pre-dates the adoption of a *child first* orientation at the centre. In this context, it is concerning that, in spite of the pretensions of the Standards to be outcome orientated, it is quite difficult to identify any concrete outcomes that could be used as measures of child first practice. Indeed, it is arguable that much of the document simply describes processes but at a lower level of detail and prescription than standards have hitherto attempted. The Howard League (2018) has moreover argued that the removal of timescales may be a retrograde step by making it more difficult to hold youth justice agencies to account, since there is no yardstick against which their activities – or absence thereof – can be objectively assessed.

This lack of clarity is potentially exacerbated by the treatment of *child first* in the YJB's latest Business Plan, for 2020/2021. Here it is represented as one of five strategic objectives alongside: statutory functions; over-represented children; custody and resettlement; and serious youth violence and exploitation. This presentation suggests that *child first* is an



independent goal to be pursued simultaneously with, but independently of, those other objectives, rather than a philosophical stance that is fundamental to the way in which those other objectives are pursued (Youth Justice Board, 2020a). This is particularly disappointing given that the Business plan for the previous year committed the Board to:

*‘develop and implement how ‘child first, offender second’ can be operationally and practically embedded within the YJB, evidenced in all core business activity and embodied by all staff demonstrating that the YJB is led by this guiding principle’* (Youth Justice Board, 2019b: 4).

Given the perennial failure of the youth justice system to address the high levels of over-representation of minority ethnic children within it, a concern underlined by the Black Lives Matter movement, the Board’s identification of this issue as a strategic priority is both welcome and timely. It is nonetheless important to note that equality of treatment is implicit in, and not distinct from, a *child first* approach. This interdependence is not, however, evident in the Board’s overview of either of the priorities.

Looking forward, Keith Fraser was appointed to replace Charlie Taylor as chair of the Youth Justice Board on 14 April 2020 and has, encouragingly, reaffirmed the Board’s commitment to a *child first* stance. In response to questioning at the Justice Committee on 2 June 2020, he noted that such an approach required that youth justice should not be seen in isolation from other services that impact on children’s lives. Less promising however was his characterisation of *child first* as a ‘branding’ exercise, ‘*something simple and quick for people to get, first of all*’, rather than a carefully thought through philosophical position that has implications for how youth crime is understood and responses to children in trouble are framed (Justice Committee, 2020: questions 190 and 191).

The extent to which the Board’s move towards a more child friendly policy orientation will automatically lead to a changed youth justice practice is accordingly hard to discern. The ‘localism agenda’, which has informed the delivery of local public services for a decade, means that the YJB, in common with other central policy making bodies, has less sway than it previously did (Department for Communities and Local Government, 2011). This reduced influence is likely to have been reinforced by the diminishing contribution that the Board makes to youth offending team (YOT) budgets: between 2011 and 2019, the YJB annual grant to YOTs fell from almost £145m to less than £72m, with a corresponding decline in the proportion of all YOT resources provided by the Board from 39% to 29% over the same period (Ministry of Justice/Youth Justice Board, 2020: annex F).

The limited research on the issue highlights an increasing diversity in models of youth justice practice. Smith and Gray (2019) point out that youth justice academic commentary has tended to rely on characterisations of ‘*dominant discourses and policy frameworks*’ which change rapidly and decisively, ‘*conveying a relatively uniform picture*’ of the youth justice system, which is replicated broadly at the level of practice (Smith and Gray, 2019: 555 and 556). They contend that such a ‘*monolithic view*’, while potentially useful for analytic purposes, fails to capture adequately real world applications of policy shifts at the centre (Smith and Gray, 2019: 556). The assumption of uniformity may be particularly problematic at the current time when it might be anticipated, for reasons rehearsed in the previous paragraphs, that ‘*influences, ideas and initiatives*’ might flow in myriad directions (Smith and Gray, 2019: 556). Drawing on an analysis of 34 local authority youth justice plans, covering the period up to 2016 when the Taylor review first gave ‘*child first*’ an official gloss of approval, they identify a range of contrasting models of provision, ranging from a more traditional ‘offender management’

approach that prioritises addressing the *criminogenic* risk factors of children subject to formal criminal justice sanctions, to, what they characterise as, a ‘*children and young people first*’ model, in which YOTs have effectively been dissolved into a wider youth support service, focused on improving the wellbeing of children with multiple needs, irrespective of, and de-emphasising concerns about, their criminal activity.

Other evidence tends to support the suggestion that practice does not automatically follow shifts in policy. The introduction of a new assessment framework, in the form of *AssetPlus*, was intended to engender a shift in practice from one informed by the risk factor paradigm, addressing risks said to have resulted in previous offending, to one that embraced a future-orientated, strengths-based, focus on desistance. Kathy Hampson’s research found that shifts in practice as a consequence of the revision of assessment procedures fell far short of what had been anticipated. YOT assessments continued, in large part, to be framed through a risk lens, generating intervention plans that were ‘*offence-focused*’, highlighting children’s deficits and past mistakes, rather than orientated on their future and building on their strengths (Hampson, 2018: 30). Similarly while diversion from formal criminal justice sanctions has increased across England and Wales, research confirms that such increases are not always associated with a recognition of *child first* principles (an issue discussed in more detail later in the report). Nor does it necessarily imply a rejection of the risk paradigm, but can readily co-exist with it (Kelly, and Armitage, 2015).

Finally, it is hard to square the philosophical turn with the lack of progress, described in earlier paragraphs, in reforming the structural framework which profoundly influences the way children in trouble are treated and how they experience that treatment. More than three years have elapsed since the Youth Custody Improvement Board concluded that the secure estate for children was not fit for purpose (Wood et al, 2017) and since HM Chief Inspector of Prisons (2017) confirmed that no YOIs or STCs could be considered safe places to detain children; but closure of these institutions appears no closer than it did then. At the same time, any potential reform of the court system appears to have been side-lined despite Taylor’s endorsement of a radically different model. Recent research confirms that the youth court cannot be considered a forum that treats those who appear before it as children first. A study, published by the Centre for Justice Innovation, confirms that many children were unable to follow proceedings and it was common for them to leave the courtroom without understanding the outcome or the rationale for any decisions made. Children rarely felt that they were listened to and some considered that the way they were treated in court was disrespectful. Frequently, children reported that they did not trust the court to be neutral and considered that the purpose of the hearing was to punish rather than understand them (Robin-D’Cruz, 2020). The Youth Justice Board, whatever its aspirations, has limited influence in these spheres. In this context, it is clear that it would be premature to describe the experiences of children in conflict with the law as being predicated on child first principles.

## ● What about decriminalisation and decarceration?

It might be countered that there have been developments over the recent period indicative of a direction of travel which is, at the very least, consistent with a *child first* orientation. The number of children entering the youth justice system for the first time (widely referred to as ‘first time entrants’ (FTEs))<sup>3</sup> and the population of children detained in the secure estate have both continued to fall, although the rate of decline has, perhaps inevitably, slowed. In 2017, the NAYJ posited a relationship between the two trends and described them as ‘*the most*

---

<sup>3</sup> A first time entrant is defined as a child ‘(aged 10-17), resident in England and Wales, who received their first reprimand, warning, caution or sentence in England and Wales, based on data recorded by the police on the PNC’ (Ministry of Justice, 2020b: 29)

*significant headline from any analysis of recent trend data'* (Bateman, 2017:4). This assessment is equally tenable three years later and the implications for the treatment of children in trouble of these reductions, sustained over more than a decade, cannot be over-stated.

Whatever the reason for the patterns shown in the data (and some suggestions are offered in due course), it is evident that they cannot be explained simply in terms of a reduction in children's offending. While there is strong evidence, described in more detail later in the report, that the underlying rate of youth crime has declined, it is not credible to suppose that the 85% fall between 2009 and 2019 (Ministry of Justice / Youth Justice Board, 2020: supplementary table 2.1) in the number of FTEs is a straightforward reflection of the volume of children's criminal activity. Equally, it cannot be seen as a manifestation of reducing levels of need among the general child population since, while the number of children subject to criminal proceedings has shown a steep decline, the care population has risen sharply: between 2008 and 2017, the number of children receiving a formal youth justice sanction (a caution or conviction) declined by 75%; by contrast the number of children entering care rose by 22% (Day et al, 2020). A more nuanced account would necessarily draw on the fact that responses to children's lawbreaking are mediated through shifts in legislation, policy and practice which determine to a significant degree which children – and, by implication, how many of them – are processed through formal youth justice mechanisms.

From the current perspective, it is undoubtedly the case that any conception of *child first* would entail a maximum use of diversion from formal criminal justice responses and a minimum use of child imprisonment. The question as to whether the trends of recent years might be attributed to the YJB's philosophical shift might therefore seem a legitimate one. A recent study has, indeed, suggested that the declines in FTEs and child incarceration have been '*sustained by a shift towards a more child-centred approach*' (Roberts et al, 2019:9). Moreover, the authors of the report argue that the emergence of this approach has included YOTs developing '*a much closer relationship with magistrates than exists within the adult system*' which, by implication, has helped to restrict the use of imprisonment in the youth justice system to a greater extent than that for individuals over the age of 18 years (Roberts et al, 2019: 9). Whatever the merits of these individual arguments (some caveats are outlined in due course), it is clear that the more child-centred approach on which the account relies cannot be equated with the YJB's adoption of a *child first* ethos.

Most importantly, in this regard, is the fact that the onset, from 2007 onwards, of the decline in both FTEs and child imprisonment, pre-dates the YJB commitment to a *child first* model by more than a decade.<sup>4</sup> The interim period saw two revised iterations (in 2009 and 2013) of youth justice National Standards before those published in 2019, neither of which contain any noteworthy evidence of the emergence of child-centred aspirations. As indicated above, as late as 2014, the Board was publicly endorsing holding more 'offenders' to account; an endorsement that might be interpreted as calling for an increased criminalisation of children (Youth Justice Board, 2014). As discussed later in the report, a range of developments from 2008 onwards did permit a greater use of informal pre-court disposals but case management guidance produced by the Board (and updated in 2019) eschews actively promoting a use of these measures rather than formal sanctions, but instead permits non-criminalising alternatives for '*low gravity offending*' where diversion is '*suitable*' (Youth Justice Board, 2019c). While increased diversion, and reduced child imprisonment, are thus clearly pre-

---

<sup>4</sup> To this author's knowledge, the first official endorsement of a child first approach by a national criminal justice agency appeared in the *National strategy for the policing of children and young people*, published in 2015. The document argued that that 'in all encounters with the police those below the age of 18 should be treated as children first' (National Police Chief's Council, 2015: 8)

requisites of a child first youth justice, they are not necessarily evidence that such an approach has been successfully embedded.

## ● Youth justice is not an island

The NAYJ campaigns for a child friendly youth justice system and advocates the establishment of a rights based statutory framework for children in conflict with the law (National Association for Youth Justice, 2011; 2019). From such a perspective, the trends described above are to be welcomed: they represent a clear manifestation of increased decriminalisation of children and a reduced reliance on child incarceration, developments that are, it is increasingly accepted, consistent with the evidence base as to how to reduce offending by, and improve outcomes for, children (see for instance, McAra and McVie, 2010). For reasons outlined in the previous paragraph, it would however be misleading to see these as evidence of the emergence of a child first model of youth justice. Changes in policy and practice are frequently not determined by evidence of effectiveness or philosophical clarity; they are equally likely to be functions of political or financial expediency (see for instance, Goldson, 2010; Bateman, 2015).

Nonetheless, the espousal by the YJB of a *child first* approach is to be applauded. It both reinforces, and provides a retrospective justification of, an increased use of diversionary and non-custodial mechanisms and other shifts in the treatment of children in trouble consistent with such a philosophy. The importance of such a statement of principle is highlighted by evidence which suggests that the tenets which it implies are not universally accepted by the whole of the youth justice sector. Cressida Dick, Commissioner of the Metropolitan Police, has for instance opined that *'harsher, more effective sentences are required to deter ... repeat child offenders'* (cited in Roberts et al, 2019: 43). Perhaps more worryingly echoes of such views can also still be found among some YOT practitioners: as one argued in response to a recent survey of YOT managers:

*'In my opinion the use of [out of court disposals] to divert from statutory orders means that by the time young people are on a court order they are more prolific and entrenched in their offending'* (Roberts et al, 2019: 43).

Given some of the concerns, outlined above, in relation to limited progress towards a child first framework for youth justice, the NAYJ considers that a proper understanding of recent developments necessitates a broader analysis of the context in which they have taken place in order to make a better informed evaluation of the extent to which the delivery of services to children in trouble is tending in a more child friendly direction. Such an analysis will also inform an assessment of how embedded, or alternatively fragile and potentially subject to rapid reversal, recent gains might be. The NAYJ remains concerned that responses to children in conflict with law continue to be tempered by the remnants of an underlying punitive ethos, as manifested, for example, by the introduction, in 2015, of mandatory custodial sentences for 16 and 17-year-olds convicted for a second time of possession of a knife or offensive weapon<sup>5</sup> and the more recent enactment, in 2019, of Knife Crime Prevention Orders for children aged 12-17 years, with breach punishable by imprisonment (Home Office, 2019a).<sup>6</sup>

There is evidence too that system contraction might be driven at least in part by financial imperatives, associated with a perceived need for austerity, rather than by any considered judgement of how the wellbeing of children in conflict with the law might best be promoted (Bateman, 2014). Funding to youth offending teams fell between 2011 and 2019 by 39%, alongside a steeper slimming down of the youth justice workforce of 58% (including sessional

---

<sup>5</sup> The provision was contained in the Criminal Justice and Courts Act 2015 and implemented from 17 July 2015

<sup>6</sup> It might be noted that the word 'prevention' is used loosely here, since the court will have to determine, on the balance of probabilities, that a child has already carried a knife on two occasions before an order can be imposed

staff, trainees and volunteers) over the same period (Ministry of Justice / Youth Justice Board, 2020a: annex F). Moreover, while some diminution of YOT funding might be anticipated given the shrinkage of the statutory caseload, the savings accrued in the youth justice sector have not been reallocated to mainstream children's service or alternative forms of youth provision, and have accordingly been lost as resources for disadvantaged children. Indeed expenditure on children's services in England has also declined over the same period; one estimate suggests funding per child in the general population fell, between 2010/11 and 2017/18, by 32%, with cuts being sharper in areas of higher deprivation (Action for Children et al, 2019).

At the time of writing, the government has cited the Covid 19 pandemic as a rationale for reducing a range of legal safeguards that apply to children in care, relaxing for instance the requirement to have an independent review of each child every six months and weakening the quality standards that apply to children's residential homes. The Statutory Instrument which introduces the measures is a temporary one, coming into force in April 2020 and expiring at the end of September of the same year. Campaigners have pointed out that the government has unsuccessfully attempted to introduce similar provisions in the past prior to the Covid 19 crisis, implying that there may be plans to make them permanent (see for example Article 39, 2020).

The capacity of the voluntary sector to pick up the slack is, moreover, severely limited and is, in any event, increasingly tied up in partnerships with private providers and payment by results contracting (see for example, Butler et al, 2017; Sheil and Breidenbach-Roe, 2014; Silvestri, 2009). Nor is that sector immune to the impact of Covid 19: a recent survey has found that 88% of youth organisations were likely to reduce service provision to young people with almost one third anticipating having to make staff redundant and 17% reporting that permanent closure was likely (UK Youth, 2020).

In this context, it is important to acknowledge that youth justice cannot be understood in isolation from other policies that impact on wider services that support children. Charlie Taylor (2016) made a persuasive case that responses to children in trouble with the law should be better aligned with other children's services. Although detailed consideration of the arguments are largely beyond the scope of the current report, it may be that the logic of austerity that helps to explain an increased tolerance for children in trouble also dictates that wider policy developments are less compatible with children's wellbeing. For instance, the United Committee on the Rights of the Child, in its latest assessment of the UK's compliance with the UN Convention on the Rights of the Child, published in June 2016, registered serious concern:

*'at the effects that recent fiscal policies and allocation of resources have had in contributing to inequality in children's enjoyment of their rights, disproportionately affecting children in disadvantaged situations.... [B]udgetary lines for children in disadvantaged or vulnerable situations ... may require affirmative social measures and [the state should] make sure that those budgetary lines are protected even in situations of economic recessions' UN Committee on the Rights of the Child, 2016: 3).*

A more recent appraisal by the United Nations of the UK's performance in respect of its record on extreme poverty and human rights, found that local authorities have cut preventative, proactive, services so that resources were inevitably focused on crisis intervention. Fiscal policy had to a large extent impacted disproportionately on children with the consequence that by 2020/21, 41% of children will fall into poverty, a rise of 10% in a decade. The report concludes that:

*For almost one in every two children to be poor in twenty-first century Britain is not just a disgrace but a social calamity and an economic disaster, all rolled into one (Alston, 2018: 1).*

The failure to adequately resource mainstream provision for children has implications for those who might previously have received youth justice interventions, but due to the contractions in the system, are now diverted from it. Withdrawing youth justice provision, in the context of depleted parallel services, risks subjecting children to a form of ‘benign neglect’ if there is no access to the support that some of them clearly require (see for instance, Bell et al, 1999). Given the relationship between crime and the economy, albeit highly mediated, it should be added that the consequences of failure to attend to such concerns might include an increased sense of social injustice among wide sections of the younger population and a longer term negative impact on levels of youth offending (Fergusson, 2013; 2016; Stafford, 2019).

## ● Purpose of the report

This report provides an overview of what is known about the nature and prevalence of youth crime in England and Wales, drawing on the latest available data. It aims to offer a contextual analysis of trends suggested by the figures that facilitates an assessment of the treatment of children who come to the attention of the youth justice system, considering the extent to which responses take adequate account of children’s rights, best interests and longer term wellbeing. It deals with the following areas:

- The extent of youth crime shown in the statistical data and how those statistics might be most usefully understood
- The nature of lawbreaking by children and the characteristics of children who come to the attention of the youth justice system
- The policing of children and the development of alternatives to arrest and formal sanctions
- The use of formal pre-court measures
- Principles of sentencing and court community disposals
- The use of child imprisonment and the treatment of children deprived of their liberty
- The extent of reoffending following youth justice intervention and whether recidivism data provide a reliable indicator of effectiveness.

The report focuses on children aged 10 – 17 years, reflecting the minimum age of criminal responsibility in England and Wales and the age at which young people are considered adults for criminal justice purposes. (The low minimum age of criminal responsibility is considered further later in the report.) Trends are for most purposes traced from 1992 onwards because of difficulties of comparison with earlier periods: prior to implementation of the Criminal Justice Act 1991, 17 year-olds were considered to be adults for criminal justice purposes and were not included in the statistics on youth crime.<sup>7</sup>

One of the (less portentous) side effects of the Covid 19 pandemic is that the Ministry of Justice has ‘*paused access to the Police National Computer, to minimise non-essential travel by our analysts*’ (Ministry of Justice, 2020a). *Criminal Justice Statistics*, one of the principal sources of data on outcomes for children in conflict with the law, does not include information on cautions, limiting the potential for analysis. As a consequence, for some purposes, it is not possible to provide trend data beyond 2018.

---

<sup>7</sup> The Criminal Justice Act 1991 extended the jurisdiction of the youth court to include young people aged 17 years. The legislation was implemented during 1992. This shift in the age of those who could be responsible for ‘youth crime’ renders problematic any comparison with earlier years



## Chapter 2

# Youth crime is falling. By how much? How do we know?

As noted in the opening chapter of the report, official statistics register a pronounced fall in the number of children coming to the attention of the youth justice system for the past 13 years. According to figures published by the Ministry of Justice and the Youth Justice Board (2014: table 4.1; 2020: table 4.1), the number of proven offences committed by children between 2007 and 2019 declined by 80%. However, assessing the extent of offending is not like measuring the volume of a material object since crime is a ‘social construct’ determined by the current state of legislative prohibition (which shifts in line with social mores and political imperatives) rather than the nature of the behaviour itself (see for instance, Lacey and Zedner, 2017). For example, possession of what would today be considered to be ‘Class A’ drugs was legal in England and Wales until the early part of the twentieth century; conversely the banning of what had hitherto been called ‘legal highs’ in 2016 increased the range of behaviours that could contravene the criminal law (Bateman, 2020).<sup>8</sup> As a consequence, what constitutes a crime at one time may not be considered so at another and vice versa.

Perhaps more importantly, from the current perspective, figures for detected youth crime are far from a direct expression of the underlying level of childhood criminal activity since they only capture those matters which receive a formal sanction. Children may escape apprehension or (and this possibility has become increasingly relevant to contemporary analyses), their behaviour might not attract a response that results in a criminal record, depending on the nature and extent of enforcement in that period. There are other measures that provide partial information in relation to youth crime, but as discussed in the following sections of the report, each of these also has (well known) limitations. There are, as a result, considerable difficulties in ascertaining with any degree of certainty the extent of children’s lawbreaking: any estimates are of necessity inferential (Bateman, 2015). It follows that further investigation is required before concluding that the decline in detected offending demonstrates that youth crime has also fallen, or fallen to the same extent, as suggested by the data on proven offences.

### ● What victims report and police record

The *Crime Survey for England and Wales (CSEW)* (known as the *British Crime Survey* until April 2012) is a large scale self-report study that asks respondents, in face-to-face interviews, about their experiences as victims of crime during the previous twelve months.<sup>9</sup> It was first conducted in 1982 and until 2001 results were published at two yearly intervals; from the latter date the survey became ‘continuous’ with results published annually in the first instance and, more recently, quarterly.

The CSEW has notable exclusions. Historically it has reported on respondents’ experience of personal crime and offences against the household of which they are part. Some more serious

---

<sup>8</sup> The Psychoactive Substances Act 2016 made it illegal to possess substances that have a similar effect to substances controlled under the Misuse of Drugs Act from 25 May 2016

<sup>9</sup> The change of name better reflects the scope of the survey which did not routinely generate data for British jurisdictions other than England and Wales

offences such as homicide – where interviewing the victim is not an option – and sexual offences - which are ‘*difficult to estimate robustly*’ – are not included in the headline data. In addition, it has not traditionally provided information on white collar offending. Business victimisation is not included, but from 2012, a Commercial Victimisation Survey has been conducted, the results of which are published separately. In 2015, new questions on fraud and computer misuse offences were added to the survey, and results on these were included in the headline estimate of total offending from 2017 onwards (Office for National Statistics, 2020a). In any event, while these appear to be areas in which crime is growing, it seems intuitively likely that children’s participation in these activities is lower than that of adults.

Other offences are also not captured by the survey: those which have no direct or explicit victim (such as possession of, or supplying, drugs) are not included; and persons living in institutions (which include custodial establishments and care homes) or other forms of non-household accommodation are not surveyed (Office for National Statistics, 2020a). In addition, given that the data relies on self-reporting, results may be subject to errors associated with respondents’ recall of past events (Office for National Statistics, 2020b).

As described later in the report, the victims of much youth crime are themselves children. Significantly, until 2009, individuals below the age of 16 years were also excluded from the survey. Since that date, estimates of crime against those aged 10 – 15 years have been made but, because of difficulties of comparability as a result of different questions being asked, these continue to be reported on separately.

Despite these limitations, the *CSEW* is regarded as a good indicator of personal and household crime because the number of respondents is sufficiently large – currently around 35,000 households (Office for National Statistics, 2020b: appendix table Year ending December 2019) - to ensure that the experiences of victimisation elicited in the interviews can be considered representative of the wider population. One of the main advantages is that, as a measure of victimisation, the survey identifies incidents that are not reported to the police – a considerable proportion of the total. Moreover, since it does not rely on police recording, the data are not influenced by changes in recording practice or the nature of policing. As will become apparent in due course, this is of particular significance in terms of understanding data on youth crime.

The *CSEW* indicates that 5.8 million offences (excluding fraud and computer misuse) were committed against persons aged 16 or older in the year ending December 2019. This represents a 9% reduction over the 6.4 million offences in the previous 12 month period, and the lowest ever recorded since the survey began in 1981. While the extent of decline has varied for different types of criminal behaviour, all of the main offence groups measured by the survey have registered a decline over this period. The exclusion of fraud and computer misuse is not insignificant, given that these two offence types contributed an additional 4.6 million episodes of victimisation in 2019, accounting for 44% of the total. Nonetheless, the latter offences have also tended to fall, from 5.2 to 4.6 million, since 2017 when data relating to them were first published.

Over the longer term, it is possible to discern two distinct periods in the figures. The number of offences as measured by the survey rose throughout the 1980s and first half of the following decade, peaking in 1995 at 19.8 million. Thereafter, the overall volume of crime has fallen by more than 70%, although the rate of decline has tended to slow a little in recent years (Office for National Statistics, 2020b: appendix table Year ending December 2019). There has also been a considerable decline in the *rate* of victimisation: in 1995, 40 adults in every 100



surveyed reported being the victim of a crime; the equivalent figure in 2019 was 20 in every 100 (Office for National Statistics, 2020b)

As indicated above, the CSEW has only recently collected data on the criminal victimisation of children below the age of 16 years and these continue to be presented separately from information on older victims for methodological reasons. In addition, the survey questions changed during the first three years so that caution is required when considering trends. In the last two years, the period of measurement has moreover changed from financial to calendar year. Nonetheless, early indications might be thought to suggest that child victimisation is also falling in line with the adult experience, albeit more slowly. There has been some fluctuation over the period, with marked rises in 2011/12, 2015/16 and 2018. Nevertheless, as indicated in table 1, the number of crimes experienced by children aged 10-15 years fell by more than 40% between 2009 and 2019 (Office for National Statistics, 2020b: appendix table Year ending December 2019).

**Table 1**

**CSEW offences reported by children aged 10 to 15 years: 2009-2019<sup>10</sup>**

Derived from Office for National Statistics, 2020b: appendix table year ending December 2019

Year	Number of offences (Thousands)	Difference over previous year
2009/2010	1,174	N/A
2010/2011	1,121	-4.6%
2011/2012	1,264	12.8%
2012/2013	990	-21.7%
2013/2014	866	-12.5%
2014/2015	804	-7.1%
2015/2016	1,007	20.2%
2016/2017	795	-21.1%
2017/2018	757	-4.8%
2018	845	11.6%
2019	696	-17.6%

Perhaps the most serious limitation of information available from CSEW data, from the perspective of the current discussion is that, because it focuses on the experiences of victims, it provides no information on perpetrators. As a consequence, it is not possible to determine what proportion of the total volume of offences can be attributed to children. However, it might be thought that the clear decline in recorded victimisation since the mid-1990s provides grounds for concluding that youth crime is likely to have fallen, given that there are no obvious reasons for thinking that adult offending will have reduced disproportionately.

While there is evidence that children and adults may have differential involvement in different offence types – children tend to be over-represented among those committing robbery offences, for instance, but under-represented for crimes of fraud (see for instance, Jones, 2001) - the consistent reduction across a wide range of different forms of victimisation is suggestive of falls in offending by both children and adults – at least in relation to those crimes covered by the survey.

<sup>10</sup> The figures provided here are from the Office for National Statistics' 'preferred measure' which omits some 'low level incidents between children'. However, the trend in the 'broader measure' of children's victimisation runs in the same direction, with the estimated fall between 2009 and 2019 being considerably higher than that shown in the table, at 54%

The decline in the number of offences committed against 10-15 year-olds might be thought to provide additional support to such an interpretation of the figures since:

- children in this age range are more susceptible to being victims of personal crime than adults;
- young people tend to commit offences against others close to their own age; and
- there is a significant overlap between victimisation and perpetration among children (Wood, 2005; Anderson et al, 2010; Smith, 2004).

Falling youth victimisation might therefore be considered a strong indicator of declining youth offending.

*Police recorded crime* generates a markedly different picture; most obviously it indicates a much lower volume of offending than the *CSEW*. In the year ending December 2019, just over 5 million offences, excluding fraud and computer misuse (5.8 million if those offences are included) were recorded by the police, a shortfall of around 14% by comparison with the volume estimated by the victimisation survey. This is particularly significant given that the range of offences included in police recording is, as outlined below, considerably broader. The gap between the two indicators is explained largely by fact that victims may reveal offences in the victim survey which they do not report to the police.<sup>11</sup> HM Inspectorate of Constabulary (2014) has also drawn attention to the failure of police to record offending adequately when it is reported to them: in 2014, 19% of the crimes that victims reported were not formally recorded. As a consequence of that finding, a rolling programme of inspections of crime recording was introduced across all police forces in England and Wales. Because the measure depends on police input, the results it generates can also be influenced by shifts in recording practice or policing more generally (an issue discussed in more detail below).

On the other hand, crime recorded by the police is not restricted to personal victimisation and it therefore provides data for a broader range of offending than the *CSEW*. To give a more complete picture, in recent years, the results from both measures have been published alongside each other (although it should be noted that because of concerns in relation to the quality of police recorded data, these are no longer designated as National Statistics. The Office for National Statistics (2020) explains that '*they provide a good measure of the crime-related demand on the police but not a reliable measure of all crime*'). Since it is not possible to establish the age of a perpetrator unless he or she is apprehended, police recorded crime shares with the crime survey an inability to provide direct data on the extent of youth crime.

The two sets of data also show a slightly different picture in terms of recent trends. Consistent with the *CSEW*, police statistics show a decline in the volume of offending over the past 25 years. The latter suggest that offending peaked somewhat earlier, in 1992 as opposed to 1995, from which point there were annual falls until 1998/1999. A series of changes in counting rules followed making direct comparisons over time difficult. Indeed the most recent Office for National Statistics do not include any police data for the period prior to 2002.

Between 2002 and 2014, police recorded crime continued to fall, from 5.9 to 3.5 million, a drop of around 41%. In the period since 2014, however, there has been a slight reversal of that trend with just over 5 million offences recorded in 2019. Moreover, the most recent figures do

---

<sup>11</sup> The most common reasons cited by victims for not reporting offences to the police in 2018 were: 'Police could not do anything' (33%); 'Too trivial / not worth reporting' (29%); 'Police not interested / bothered' (20%); and 'Private / dealt with themselves' (19%) (Office for National Statistics, 2019)

not include crimes reported to the Greater Manchester police who were unable to provide the requisite data. The Office for National Statistics (2020) explains that:

*'Improvements to recording processes and practices by the police have made substantial contributions to rises in recorded crime over the last five years. This effect has been more pronounced for some crime types, and for many types of offence, these figures do not provide reliable trends in crime'.*

Given this level of uncertainty and inconsistency, perhaps the most useful conclusion to be drawn for current purposes is that the current level of police recorded crime remains below that of 15 years ago. Indeed despite their differences of emphasis, and magnitude, both measures of crime accordingly appear to support a long term decline in the extent of crime in England and Wales since at least the mid-1990s. There is no obvious reason for thinking that trends in children's criminal behaviour diverted from that wider pattern.

## ● Public perceptions

Responses to children in trouble during the 1990s were shaped by what has come to be known as 'the punitive turn' (Muncie, 2008). Although this was a wider phenomenon affecting jurisdictions across much of the Western industrialised world, the catalyst that triggered increasingly harsh treatment of children who broke the law in England and Wales is frequently understood to have been the murder of two year-old James Bulger, in 1993, by two ten year olds. In reality, the origins of that turn pre-dated that dreadful event, but were undoubtedly reinforced, and fuelled by it. In any event, in the ensuing decade, an array of legislative changes and hardening attitudes contributed to soaring levels of prosecution, even though detected youth crime was falling, signifying an abandonment of pre-court diversion, and led to a mushrooming in the use of child imprisonment (Nacro, 2003a; Goldson, 2002).

In this climate, at least partly because crime was falling, political interest increasingly strayed outside the parameters of the formal criminal justice to incorporate a focus on what Louise Zedner (2007) has called 'pre-crime'. New Labour, wedded to being tough on crime and tough on the causes of crime, was at the forefront of this move to widen the lens of criminal justice concerns and anti-social behaviour, a term that had hitherto been rarely used outside of the housing sphere, took on a growing importance with Tony Blair (2004, cited in Squires, 2008: 307) prime minister when Labour took office in 1997, acknowledging that the issue was 'something of a person crusade for me'. Anti-social behaviour orders (ASBOs) were introduced by the Crime and Disorder Act 1998 and were used disproportionately against children. In the first few years, take up was slow but the numbers rose sharply as the Home Office encouraged their use (Burney, 2002) before tailing off again. Between April 1999 and December 2000, just 63 orders were imposed on children, rising to 1,581 in 2005. In 2010, the latest year in which data were published the number had fallen to 536, but by that time 1,384 children had been imprisoned for breach of an order imposed for behaviour that might not in itself have been criminal (Home Office, 2016).

In 2014, no doubt in part because of increasing evidence of ineffectiveness (Wigzell, 2014) and that being made subject of an order was seen by some children as 'a badge of honour' (Solanki et al, 2016: 135), the ASBO, alongside a range of other ASB measures was replaced by an assemblage of injunctions and criminal behaviour orders.<sup>12</sup> No statistical information has been published about the use of these replacement measures but data on public perceptions of the extent to which anti-social behaviour is a problem in their area continue to be collected as part

---

<sup>12</sup> The legislative changes were contained in the Anti-social Behaviour, Crime and Policing Act 2014

of the CSEW. These figures provide further confirmation that crime, and associated forms of victimisation, are falling.

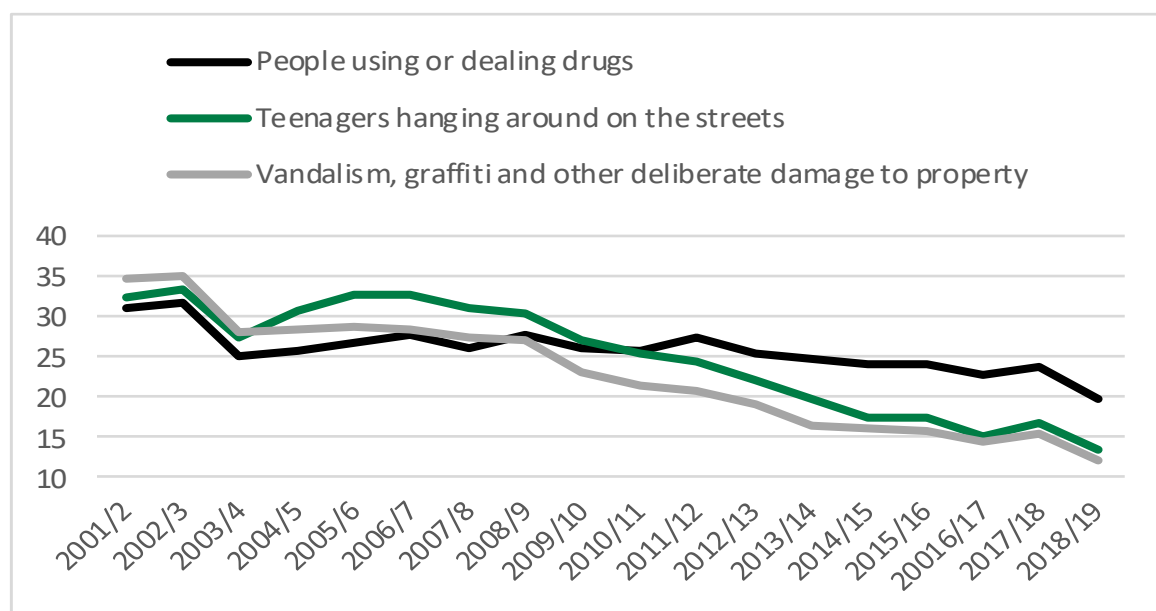
It is widely accepted that ASB is a '*contested concept*' which depends on subjective perceptions of what constitutes '*harassment, alarm or distress*' (Millie, 2009). Nonetheless, the figures might be thought to provide an indication the trends in forms of delinquency that are not captured in statistics on offending. In 2002/03, 21% of respondents to the CSEW considered there to be a 'high level' of anti-social behaviour in their area. By 2018/2019, that figure had fallen to 7%. Over the same period, each of the seven indicators of ASB used in the survey showed a decline.

The indicators that are, arguably, most likely to be associated with children's behaviour are of particular interest for current purposes. As shown in figure 1, public perceptions of the extent to which 'people using or dealing drugs', 'teenagers hanging around on the streets' and 'vandalism, graffiti and other deliberate damage to property', is '*a fairly/big problem in their area*' have all fallen sharply in recent years (Office for National Statistics, 2020: annual supplementary tables).<sup>13</sup>

**Figure 1**

**Percentage of members of the public thinking that selected indicators of ASB are a fairly /big problem in their area: 2001/02 to 2018/19**

Derived from Office for National Statistics, 2020: annual supplementary tables



While some of the fall might derive from a reduced saliency of ASB in policy discourse, the downward trajectory which the figures show is consistent with other evidence indicating a reduction in unlawful and other forms of problematic behaviour. Not all the indicators are specific to young people (although one of them is), but children are perceived to be disproportionately engaged in street-based ASB of the sort reflected in the graph, a perception that it is reflected in a higher use of anti-social behaviour sanctions for under-18s (Wigzell, 2014).

<sup>13</sup> The other indicators are: rubbish or litter lying around; people being drunk or rowdy in public places; noisy neighbours or loud parties; and abandoned or burnt-out cars. Each of these has also tended to decline

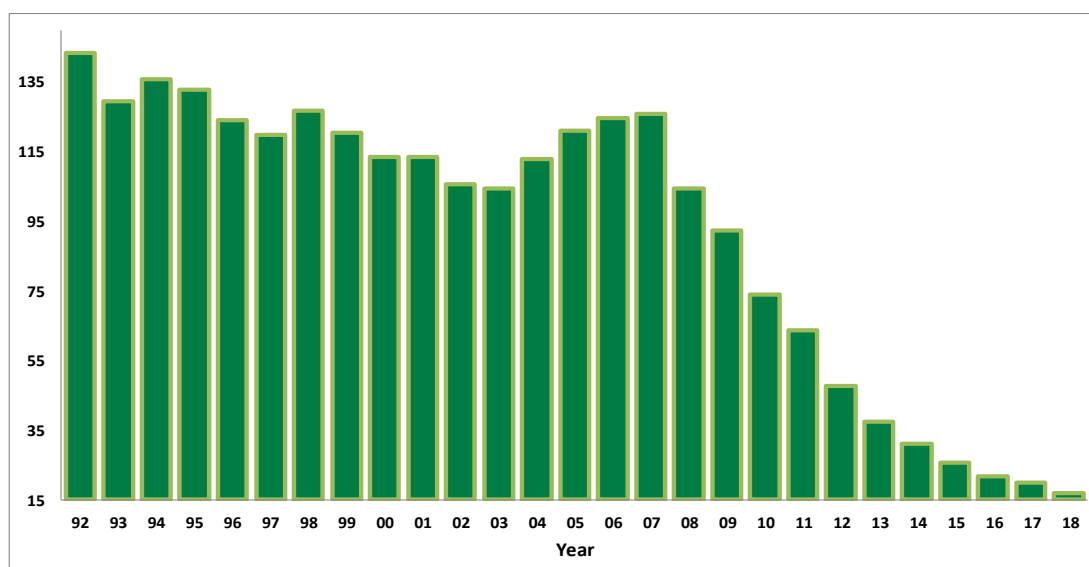
## ● Smells like teen spirit? The decline in detected youth crime

As previously indicated, it is not possible to infer the extent and direction of youth crime directly from the data presented in the previous section of the report since none of the sources described provide information on the characteristics of individuals responsible for the offending, or ASB, reported on. More specifically, the age of a perpetrator can only be ascertained if they are apprehended; as a consequence, most commentary on trends in youth crime has tended to rely on data for offences that have been detected and where there is a recorded sanction against a person identified as a child. Such figures are consistent with other measures in suggesting that there has been a substantial reduction in youth offending.

There are difficulties with tracking changes over time because of modifications in the way that data are recorded and aggregated. This qualification notwithstanding, the available evidence indicates that the fall in detected youth crime has been sustained over a considerable period. As noted previously, figures for detected youth crime prior to 1992 do not include 17 year-olds since children of that age were considered to be adults for criminal justice purposes. Earlier data are accordingly not comparable with information on children's criminal activity after that date. This difficulty aside, between 1980 and 1990 the number of children cautioned or convicted of an indictable offence fell by 37% from 175,700 to 110,800 (Rutherford, 1992). There was an inevitable sharp increase in detected youth crime in 1992 as 17 year-olds were captured for the first time but thereafter, as shown in Figure 2, there was a continued steady decline of 27% up to 2003. Following a short period during which detected offending rose, the long term decline recommenced from 2007 onwards. Publication of data for 2019, as noted above, has been impacted by the Covid 19 pandemic. A lack of recent information on cautions precludes consistent comparison with earlier periods. The current analysis accordingly ends at 2018. In that year, 16,901 children received a substantive disposal (caution or conviction) for an indictable offence compared with 143,600 in 1992, a reduction of 88% (Home Office, 1993; Ministry of Justice, 2019b).

**Figure 2**

**Children receiving a formal pre-court disposal for, or convicted of, an indictable offence: 1992-2018 (thousands)**



As indicated earlier, figures for detected offending inevitably understate the extent of children's lawbreaking for a number of reasons. There is a process of '*attrition*' whereby offences committed by children are progressively filtered before reaching the stage where they are caught in the data for detected crime. First, a considerable proportion of criminal activity does not come to police attention. This is frequently true of crimes where there is no personal victim which are therefore likely to go unnoticed; but, as noted above, even where victims are aware of having been offended against many choose not to notify the police. Second, where offences are reported, detection rates remain low: in the year ending March 2019, for instance, 44% of incidents recorded by the police were closed without any suspect being identified; in a further 34% of cases, proceedings were not pursued because of evidential difficulties (Home Office, 2019b: data tables). The effect of such filtering is that figures for detected youth crime fail to capture much of children's criminal activity; most children who offend are simply not caught and a significant proportion of those who are do not receive a formal sanction.

Nonetheless, while such difficulties suggest that the data in Figure 2 cannot be thought an adequate representation of the volume of children's offending, they do not in themselves provide grounds for dismissing the trends which those data show. There is for instance no reason to suppose that offences committed by young people are less likely to be reported and detected than those perpetrated by adults. Indeed, given that children are more likely to engage in relatively unsophisticated criminal activity, in public spaces, rendering their offending more visible to the authorities, the reverse may be true (Jones, 2001).

That said, it is clearly true that changes in the level of detection can influence the extent of youth crime that receives a substantive outcome and '*clear up*' rates do vary over time. The rate of detection did fall during the early part of the 1990s and this might explain some of the reduction in children's recorded offending in that period. Between 1993 and 1999, however, there was an upturn in the proportion of offences reported to the police that were detected, so improved policing could not have contributed to the continued downward trend in recorded youth crime in those years. From 2002/03 to 2013/14, the proportion of offences cleared up by the police rose again, from 23.1% to 29.4%. One might accordingly have anticipated an increase in detected youth offending over that period; in the event, it fell by almost three quarters. As a consequence of the introduction of a new outcomes framework in the intervening years, more recent figures for police clear ups are not directly comparable with earlier data. Nonetheless, it is apparent that trends in youth crime cannot be explained simply as a function of changes in the proportion of offences detected by the police (Bateman, 2017).

It might be concluded with some confidence, therefore that, while figures for detected youth crime do not provide an accurate picture of the extent of children's offending, they provide a useful indication of broad trends; they provide a good basis from which to assess whether youth crime is increasing or declining. Considered in the context of the data derived from CSEW, police recorded crime, and public perceptions, each of which show declines in the overall volume of offending or ASB, one might reasonably conclude that the trajectory shown in the figures for detected youth crime, over a considerable period of time, represents a genuine reduction in children's law breaking.

### ● **Maybe it was me - self-reported offending**

A further indication of youth crime can be derived from self-report studies. Like victimisation surveys, these have the advantage that they are not dependent on offences being notified to the police, recorded or detected by them. Conversely, because they focus on offending rather than victimisation, they provide information on the age of the individual perpetrator, thereby

distinguishing adult from youth crime. On the other hand, they rely on respondents giving an accurate account: children may seek to exaggerate or minimise their engagement in delinquent activity and there is no definitive way of determining the extent to which such misrepresentations might distort the figures, or in which direction.

A more significant limitation, however, is a lack of consistency in the available data: no regular surveys have been conducted over the longer term; self-report studies that did exist have been abandoned and results are therefore only available for relatively short periods, limiting the potential to identify trends; and methodologies for surveys that have been conducted, and the nature of the sampling employed, have varied considerably. The results from different studies cannot, therefore, necessarily be compared.

The *Offender, Crime and Justice Survey* was conducted annually by the Home Office between 2003 and 2006 but was subsequently discontinued. It was not focused purely on youth crime but had a sample range of 10 to 25 years. A longitudinal analysis of the results over the three years indicated a reduction in the prevalence of various forms of criminal activity: for instance, 17-18 year olds born between 1986 and 1988 reported lower levels of engagement in assault leading to injury than those born in 1983-1985. Similar analysis indicated that, at age 12 – 13 years, self-reported anti-social behaviour for children born between 1992 and 1996 was significantly below that for the equivalent cohort born in 1989-1991 (Hales et al, 2009).

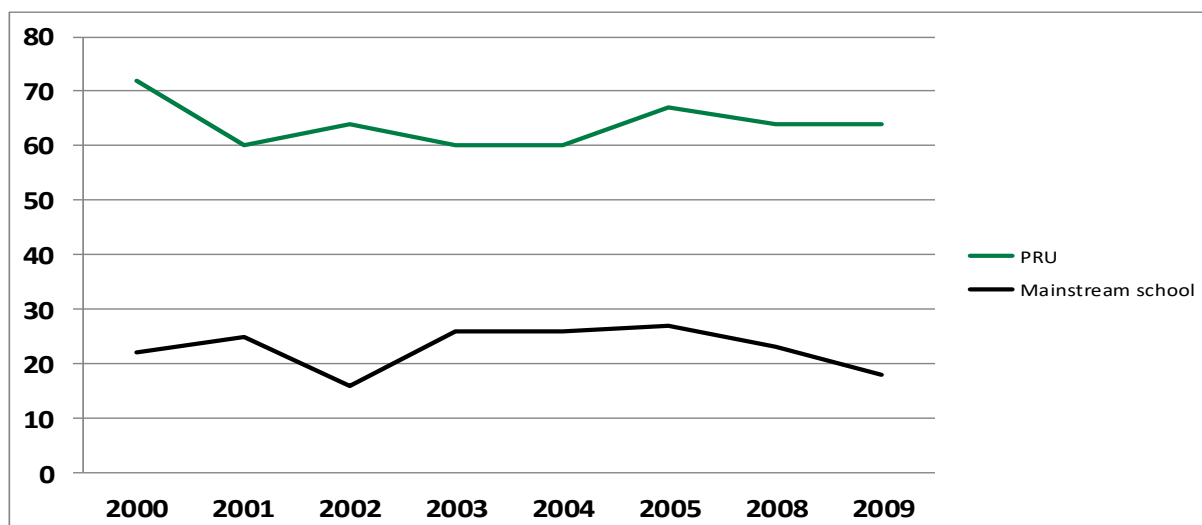
The Youth Justice Board commissioned MORI to undertake a self-report study of children aged 11-16 years in mainstream school and pupil referral units annually between 2000 and 2009, although no surveys were conducted in 2006 or 2007. The results show something of a different pattern to that derived from other measures. They suggested that while offending by the groups of children did reduce over the relevant timescale, there was some fluctuation; moreover the decline was more modest than that shown in other sources. As indicated in Figure 3, the proportion of children in alternative education who admitted having committed any form of offence in the previous 12 months registered an overall fall, from 72% in 2000 to 64% in 2009; the equivalent figures for those in mainstream schooling demonstrated a smaller reduction, from 22% to 18% over the same period. Moreover, unlike the other data considered to this point, the decline was not consistent over the nine year period but was instead relatively stable for much of this time.



**Figure 3**

**Proportion of children aged 11-16 self-reporting offending in the previous 12 months: 2000-2009 (2006 and 2007 excepted)**

Derived from Anderson et al, 2010



One possible explanation for the apparent discrepancy between the MORI survey and other measures, in addition to the potential unreliability of children's reporting, is a function of the methodology of the former. A focus on children in educational settings is liable to miss those at the highest risk of becoming involved in delinquent behaviour; research confirms that offending is more prevalent among children not in any form of education (see for instance, McAra and McVie, 2010). Similarly, a failure to include children above school leaving age – 16 years at the time of the surveys – means that the peak age of youth offending is not captured (see below for a discussion of age and crime). As a consequence, the MORI studies do not garner information from those groups of children among whom rises, or reductions, in offending would be most pronounced.

Whatever the limitations of the evidence from self-report research, taken as a whole it would appear to be consistent with (and certainly does not contradict) a decline in the underlying level of youth crime over the relatively short periods to which they relate, albeit at a level which is more muted than the reduction suggested by other sources. Since 2009, no further national self-report studies on youth crime have been undertaken.



## Chapter 3

# Making sense of patterns in detected youth crime

### ● Free falling ...

The conclusion that the long term trajectory registered in the data for detected youth crime represents a genuine decline in the underlying level of criminal activity by children over at least the last thirty or so years appears irresistible (National Audit Office, 2010). The first consideration is the consistency in the direction of travel which would in itself be grounds for thinking that children's lawbreaking had reduced in the absence of any plausible alternative explanation for that pattern. Equally significant however is the supporting evidence from all other available sources including: the CSEW, police recorded crime, public perceptions of ASB, and, perhaps to a lesser degree, self-report studies. Indeed, one recent analysis has gone so far as to argue that *'a significant part'* of the explanation of the fall in overall levels of measured crime since 1995 is *'the reduction in the overall proportion of the youth population that are involved in criminal activity'* (Griffiths and Norris, 2020: 26).

Moreover, contrary to public perceptions that crime is rising – 80% of those asked in the year ending March 2019, believe that crime has risen *'a little or a lot in the past few years'* (Office for National Statistics: supplementary tables)<sup>14</sup> - the fact that youth crime has fallen in the recent past is unsurprising given other contextual evidence that renders such a trend more credible. Physical violence between children in schools has, for instance, declined in recent years: according to the Health Behaviour in School-aged Children study, the proportion of boys who reported being involved in two or more fights in the past twelve months, fell from 34% to 24% between 2002 and 2018; the equivalent figures for girls were 14% and 9%. There was a corresponding reduction in the proportion of boys reporting having received two or more injuries in the previous year, over the same period, from 35% to 25%. The pattern for girls was slightly different, falling from 20% to 17% between 2002 and 2014 before rising to 21% in 2018. The same study shows sexual activity for children below 16 years of age has also fallen. While 40% of 15-year-old boys indicated that they had had sexual intercourse in 2002, this had fallen to 18% in 2018; a slightly less pronounced decline was noted for girls from 36% to 23% (Brooks et al, 2020).

Other forms of what might be considered risky behaviour have shown comparable trends. Alcohol consumption, for instance, by children has contracted since the late 1980s (Hagell, 2013). The proportion of school students, aged 11-15 years, who have ever had an alcoholic drink fell from 62% in 1998, when the survey was first conducted, to 38% in 2014, with the pattern broadly consistent for both boys and girls. There was a rise, to 44%, in 2018 but the figures are not comparable because of a change in the wording of the question asked in 2016 (NHS Digital, 2019). There was a corresponding fall, over the same period, in the proportion of children who report drinking at least once a week, from 13% in 1998 to 4% in 2014, and 6% in 2018 – with the recent rise again reflecting a change in the wording of the question (NHS Digital, 2019).

---

<sup>14</sup> This disappointing finding is tempered somewhat by the fact that a rather lower proportion, 50%, thought this true of their local neighbourhood (Office for National Statistics, 2020: supplementary tables), implying perhaps that perceptions of national crime trends are derived from sources other than personal experience

Similar decreases can be found for smoking: whereas 53% of children reported that they had ever smoked in 1982, this proportion had fallen to 16% by 2018. Over the same period, the proportion who considered themselves to be regular smokers declined from 11% to 2% (NHS Digital, 2019). A parallel trend is shown in relation to drugs use, albeit that the decline commenced more recently (Hagell, 2013). In 2001, the percentage of 11-15 year-olds reporting ever having taken a drug was 29%; by 2014 that figure had fallen to 15%. (The figures for girls and boys were 19% to 10%, and 21% to 11% respectively). The overall figure rose to 24% in 2018 but psychoactive substances were included in the measure for the first time in 2016 so data from that year onwards are not comparable. In 2018, of those children who admitted taking a drug within the past 12 months, two thirds had done so less than once a month, and a quarter had only done so on one occasion (NHS Digital, 2019).

These reductions in children's participation in these analogous forms of 'risk taking' behaviour, over a considerable period, make it more likely that children's criminal activity would also have tended in the same direction. This is particularly true given that the relationships between drug taking and offending (Hammersley, 2008; Aston, 2015), and alcohol consumption and youth crime (Alcohol Concern, 2016) are both well documented (see also McAra and McVie, 2010).

#### **... but it isn't all downhill**

However, if the overall trajectory is plain, and explicable largely in terms a downward trend in youth crime, the pattern shown in Figure 2 for the period since 2003 clearly requires a more nuanced analysis. Two features are particularly striking:

- The relatively stable downward trend in detected offending that had persisted for more than a decade came to an abrupt end in 2003 with a pronounced, albeit short lived, rise in detected offending. By 2007, the number of substantive youth justice disposals imposed on children was one fifth higher than it had been four years previously.
- Conversely, the period from 2007/8 onwards is associated with further falls in detected youth crime. But this is no straightforward reversion to the trend prior to 2003 since the decline is significantly steeper than at any point since, at least, the early 1990s. Indeed, the reduction during 2008 alone was sharp enough to compensate for the cumulative increase over the previous four years. The rate of decrease has scarcely abated in the ensuing period although there has been a slight levelling off over the past three years. By way of comparison, while detected youth offending declined between 1992 and 2003 by 27%, the equivalent drop between 2007 and 2018, a period of the same length, was 87%.

These abrupt oscillations require some attention since it is implausible that fluctuations of such magnitude can be explained by changes in children's lawbreaking; put simply, children's behaviour doesn't change that rapidly (and in two contrary directions). Significantly none of the other measures of offending reviewed above suggest that an abrupt short term rise in crime occurred in the four years from 2003. Equally, while those other indicators are consistent with a fall after that date, the reduction registered is considerably less pronounced than that shown in the data for detected youth crime.

In line with other commentators, the *NAYJ* has previously argued that the anomalous rise, and subsequent fall, in substantive disposals shown in official statistics can both be convincingly explained in terms of shifts in police practice, and that of other agencies, to accommodate successive government performance indicators. That changing practice has necessitated an associated cultural adjustment involving a redefined understanding of accepted youth justice

practice which has in turn tended to reinforce a different treatment of children who come to police attention (Roberts et al, 2019). The contours of the argument are well rehearsed but some of the detail bears repeating as it provides an illuminating lens through which to critically examine official statistics for detected crime over the recent period; to assess the extent to which the progress of the last decade was fuelled by a *child first* ethos or more contingent considerations.

The reforms of the New Labour government elected in 1997 were, as intimated earlier in the report, predicated on pretensions of toughness that manifested themselves in a determination to intervene early, both with children who infringed the criminal law and those who were considered at risk of doing so (Pitts, 2000). The professed aim of such early intervention was as Jack Straw (1997), then Home Secretary, put it, to:

*‘nip... offending in the bud, to prevent crime from becoming a way of life for so many young people’.*

Consistent with that punitive, interventionist, ethos, once the reforms had bedded in, the government established a target to narrow the gap between offences recorded by the police and those *‘brought to justice’*. This was to be achieved by increasing the number of cases that resulted in a *‘sanction detection’* (Home Office, 2002).<sup>15</sup> The indicator required a growth in annual sanction detections of almost a quarter of million by March 2008 against a March 2002 baseline (Home Office, 2002). No rationale for the extent of the required rise was provided at the time, and the nature of the target, couched as it was in terms of absolute numbers rather than as a percentage of offences that come to police attention (or the extent of victimisation reported in the British Crime Survey as it then was), suggests an element of arbitrariness. Indeed, Garside (2004: 19) has characterised *narrowing the justice gap*, as this policy became known, as *‘a peculiarly confused strategy’*. Nonetheless, the importance invested in the indicator by the government was clear with Home Office (2002: 3) referring to it as *‘the key measure of the effectiveness of the criminal justice system’*.

The target was met a year early but this achievement was not indicative of improvements in police performance, since any rise in the rate of detection was insufficient to account for the 225,000 increase in substantive outcomes; it was not, in other words, primarily a consequence of a higher proportion of crimes being solved than hitherto (McKee, 2014). Rather, as is now generally accepted, the growth in sanction detections was a function of formal disposals being imposed for incidents that came to police attention that would previously have attracted an informal response (Bateman, 2008; Nacro, 2009). Government intervention thus led directly to net-widening, a phenomenon whereby increasingly minor forms of misdemeanour are drawn into the ambit of the formal criminal justice system (Kelly, 2008).

The target, as conceived by government, did not distinguish between children and older individuals but it rapidly became apparent that it had a disproportionate impact on the former. This was because adult offending was more likely, in any event, to be met with a formal criminal justice response than children’s lawbreaking, for a range of reasons:

- Children’s offending is, on average, of a less serious character than that of adults (an issue discussed in more detail in due course)

---

<sup>15</sup> For this purpose, sanction detections for children included: cautions, conditional cautions, reprimands and final warnings, penalty notices for disorder, convictions, and offences taken into consideration. Reprimands and final warnings were formal pre-court disposals that were introduced, in place of cautions for children, by the Crime and Disorder Act 1998, and were abolished by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, to be replaced by youth cautions

- Children are less likely to have previous convictions (because they have had less time to accrue them); and
- The police may be inclined to respond more leniently towards those yet to attain adulthood.

There was accordingly a greater scope to increase sanction detections in relation to children's offending since there had hitherto been a greater use of informal responses for that group even where their offending had come to police attention. By contrast, a considerably higher proportion of adult offending already attracted a formal response. That disproportionate shift in the treatment of children is evidenced in the statistical data: while between 2003 and 2007, the number of adults entering the criminal justice system rose by less than 1%, the equivalent figure for those below the age of 18 years was 22% (Nacro, 2009). Within the latter cohort, those populations who might previously have been expected to benefit from an additional leeway from the police, leading to an erstwhile higher use of informal responses, were particularly adversely affected, including: younger children, girls and those arrested for petty transgressions. The introduction of the sanction detection measure accordingly resulted in the unnecessary criminalisation of large numbers of children by targeting '*the unusual suspects*' (Bateman, 2008: 3) or as Rod Morgan (2009: 6), previously chair of the Youth Justice Board put it, by harvesting the '*low-hanging fruit*'.

As the implications became clear, the target was criticised precisely for this tendency to inflate the use of criminal sanctions for minor lawbreaking, leading to an inappropriate use of police resources (Flanagan, 2008). The rapid rise in the numbers of children entering the criminal justice system led to corresponding pressures on courts and youth offending teams as workloads mushroomed. Though the punitive sentiment (and commitment to early formal intervention) behind its introduction were still apparent in policy and practice thereafter, pragmatic considerations ensured that the target was not renewed.<sup>16</sup> Indeed so far as children were concerned, it was replaced by a measure with a contrary, and (from the perspective of the NAYJ) manifestly preferable dynamic whose implications were more closely aligned to the evidence base, although it seems unlikely that its adoption was evidence driven (Goldson, 2010).

The new target was one that applied solely to youth justice and involved the invention of a new category of child: the first time entrant. (Earlier data for FTEs were produced retrospectively.) The *Youth Crime Action Plan* (YCAP), published in 2008, the year the sanction detection target ended, committed the government, with some fanfare, to achieving a reduction in the number of FTEs by 20% by 2020. The target had been included earlier in the Youth Justice Board's Corporate and Business plan 2005/06 to 2007/08 (Roberts et al, 2019) but at that time appeared to have little impact, in part because the sanction detection indicator, which had a greater influence over police activity, was still in force; and in part because the Board had, arguably, less sway than the government over the police in any event. Significantly however, it had also featured in Government Public Service Agreement 24 in October 2007 (Smith, 2014a). The FTE measure was adopted by the Coalition government as one of its three high level outcomes for youth justice in 2010 (Ministry of Justice, 2010),<sup>17</sup> each of which was subsequently retained by the Conservative administration, elected in 2015. As indicated above, the target introduced by YCAP ran until 2020, and its current status is unclear, but it would appear not to have been renewed. The latest iteration of the YJB's Business plan

---

<sup>16</sup> A revised target continued to apply between April 2008 and May 2010, but this focussed on more serious offences 'less likely to be committed by young people than adults' (Sutherland et al, 2017: 3)

<sup>17</sup> The other two high level outcomes were: reducing reoffending and reducing the number of children in custody

2020/21, for instance, makes no reference to any targets. Nor is there any explicit mention of FTEs; the document does however cite, as an indicator of success, that *'the number of children who offend for the first time continues to decrease'* (Youth Justice Board, 2020a: 2).<sup>18</sup>

If the sanction detection target was net-widening, and promoted the criminalisation of minor delinquency, the indicator which replaced it had a converse impetus, encouraging the police to respond in an informal manner to children who had not previously attracted a substantive disposal, whether or not they had previously come to police attention. The commitment to formal early intervention, which had characterised youth justice policy for more than a decade, was thus suddenly replaced by a drive to divert from the formal mechanics of the criminal justice system children with no formal antecedent history.

YCAP failed to acknowledge that this was a policy reversal, simply asserting that *'reductions in youth crime will principally come about if we reduce the flow of young people entering the criminal justice system'* (HM Government, 2008: 14) without explaining why that should be so. (Indeed, if the measure of youth crime is detected offending – the government's preferred indicator for most purposes - the statement is clearly tautological.)

While unsustainable workloads, and the negative unintended consequences of the government's strategy to narrow the justice gap, were, as suggested above, considerations in this sharp U-turn, it is hard to ignore the financial context in which the shift occurred: 2008 was also the year that economic crisis hit the UK economy. Packing the justice system with children who had engaged in - what was often- trivial delinquency was an unaffordable expense increasingly in tension with developing austerity in the public sector (Bateman, 2014). Significantly, as John Pitts (2001b) has noted, the last period in which youth diversion received such high level political backing was during the 1980s, under Margaret Thatcher's administration, a period that also coincided with the onset of austerity.

Whatever the reasoning for its introduction, the new target had an immediate impact, and, like its predecessor, was met early: the 20% reduction was achieved in the first 12 months after it was formally adopted by the government. The fall has continued in the period since. As shown in Figure 4, the number of FTEs rose between 2003 and 2007 by almost one third in response to the sanction detection target; by contrast, as the new performance measure kicked in, the trajectory reversed. Between 2007 and 2019, the number of children entering the system for the first time fell by 89% from 110,826 to 11,928 (Ministry of Justice / Youth Justice Board, 2020a: supplementary table 2.1). Since such children account for a sizeable proportion of all those who are given a formal sanction each year - 43% of the total in 2019 (Ministry of Justice / Youth Justice Board, 2020a: supplementary table 2.1), there has been a corresponding impact on the overall volume of detected youth crime. The marked similarity in the patterns over this period shown in Figures 2 and 4 is therefore unsurprising.

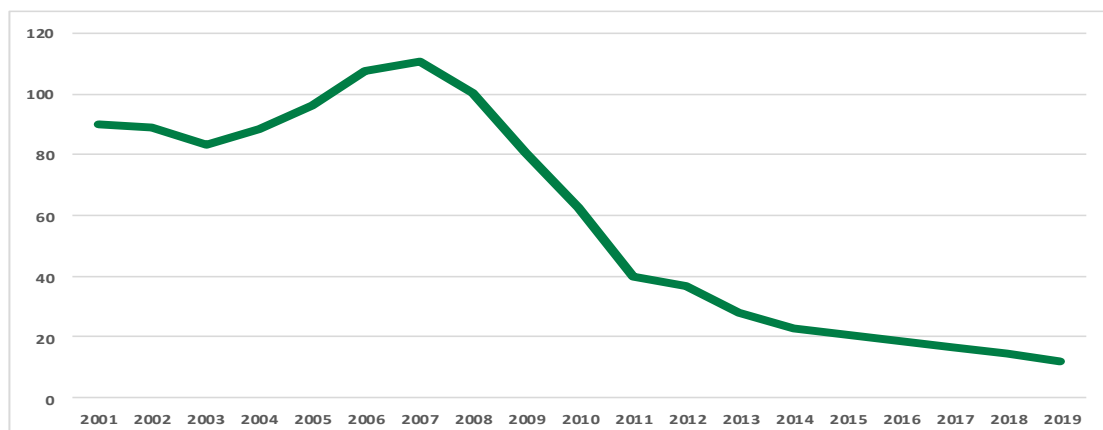
---

<sup>18</sup> No evidence is provided for this statement although it might reasonably be assumed that the Board is relying on data for FTEs. It should be noted however that offending for the first time and being a first time entrant are not synonymous: as already indicated, many offences committed by children do not come to the attention of the authorities; moreover, it is clear that many children apprehended for offending do not become first time entrants, because they are dealt with informally.

**Figure 4**

**First time entrants (thousands) to the youth justice system: 2000 to 2019 (year ending March)**

Derived from Ministry of Justice/Youth Justice Board, 2020a: supplementary table 2.1



Roberts et al (2019), while recognising the import of the FTE target, have questioned whether it can fully account for the pattern shown in the above graph. They point to the fact, for example, that the number of adult FTEs has also fallen, albeit at a much slower rate than that for children, with the onset in both trends commencing in the same year. Although this is not explored further in the report, this coincidence in timing would appear to highlight the importance of the sanction detection target coming to an end, with the result that the falls in crime registered in the *CSEW* and police recorded offences became more visible in the statistics for detected offending for all age groups. The authors also note, rightly, that FTEs began to fall before the publication of *YCAP*. They argue, as a consequence, that recognising a shift in the underlying approach to youth justice predating *YCAP*, is critical to a full understanding of the phenomenon: youth justice became, as they put it, more ‘*child-centred*’ (Roberts et al, 2019: 85).

The evidence which they provide for this shift is however largely anecdotal. For instance, the report cites a number of YOT manager responses to a survey conducted as part of the research, who attest to an increase in informal diversion and programmes to support it. But these responses do not, at least on the face of it, suggest that such developments pre-dated *YCAP*. Indeed, ‘*triage*’, one of the specific interventions referred to in the report, was introduced on a pilot basis in 69 YOT areas by *YCAP* (HM Government, 2008) and so cannot have influenced events before publication of the plan. Such explanatory factors are accordingly susceptible to the same challenge with regard to chronology as accounts that rely solely on the FTE target. The report refers to an audit conducted by the Ministry of Justice and the Youth Justice Board (2017a), which highlighted the extensive involvement of YOTs in prevention and diversionary activities; but this snapshot was taken in 2017 and sheds little light on the nature of youth justice interventions in 2007. The authors argue that the multi-agency nature of YOTs, and the provision of ‘*lead caseworkers*’ within those teams, has helped ‘*to keep children out of the formal criminal justice system*’ (Roberts et al, 2019: 47), but both of these factors were equally in play during the period between 2003 and 2007 when the sharp rise in sanction detections occurred. No explanation of this discrepancy is offered.



A change of emphasis at government level is also identified as a significant influence. The authors note that the Green Paper, *Every Child Matters*, contained extensive references to youth justice, helping to create a climate:

*'in which support for children in trouble began to be seen as part of a wider programme of measures to support children facing serious problems'* (Roberts et al, 2019: 44).

But this is misleading. To emphasise the fact that those who offended should *not* be considered in the same breath as others *'facing serious problems'*, the Home Office (2003) published a companion document to the Green Paper, entitled *Youth Justice: the Next Steps*, making it clear that children in trouble with the law were not adequately addressed as falling within the category of *every child*. No other group warranted a separate companion. Moreover, the *'extensive references'* that did appear could hardly be considered *'child-centred'* in the required sense. The youth justice reforms described in *Every Child Matters* consisted of:

- Making child safety orders (criminal justice like interventions, introduced by the Crime and Disorder Act 1998, for children below the age of criminal responsibility) *'more effective'*;
- Making intensive supervision and surveillance programmes more widely available;
- Simplifying community sentences; and
- Making *'greater use of a wider range of residential placements such as intensive fostering for young offenders, including for 10 and 11 year old persistent offenders'* (HM Government, 2003: 7 emphasis added).

In chronological terms, dating the emergence of more a child-friendly approach to the year in which a frenzied criminalisation of children began is clearly problematic.

Indeed, the tenor of government policy continued to be punitive for some time afterwards. YCAP, published five years later, while notable for the welcome introduction of the FTE target, could scarcely be characterised, in other respects, as child-centred. The first topic discussed in the Ministerial foreword, jointly authored by the Home Secretary, the Minister of Justice and the Children's Minister, was *'enforcement and punishment'*, with proposals to:

*'set clear boundaries of acceptable behaviour – with clear consequences for those who over-step them. This means no tolerance for carrying weapons, no tolerance for underage drinking in public, and the expansion of police action to take vulnerable kids off the streets'* (HM Government, 2008: 1).

While support was to be offered to families whose children were at risk of offending, described in the Plan as those *'disrupting our classrooms – or worse, roaming the streets committing crime'*, such support was to be *'non-negotiable'* (HM Government, 2008:1). As a whole, the strategy was designed to be *'tough on the minority who persistently cause problems for others'* (HM Government, 2008: 2). The crucible from which the FTE target emerged, while it helped to foment the development of a more tolerant climate of opinion, was not devoid of punitive sentiment (Bateman, 2012a).

On safer ground, perhaps, the authors note the early adoption of an FTE target by the YJB in 2005. No doubt, this move helped to prepare the ground among youth justice practitioners for a greater focus on diversion, but as noted above, sanction detections imposed on children

continued to rise for a further two years, suggesting that the immediate impact on police decision-making was, at best, muted. The report makes no mention of the first intimations that government might favour increased diversionary activity. These were contained in the *Children's Plan*, published in December 2007, which announced that an informal, pre-court, disposal designed to reduce prosecution (the 'Youth Restorative Disposal') would be piloted from April 2008 (Department for Children, Schools and Families, 2007: 139), building on the Public Service Agreement of two months earlier, and heralding a potential for less harsh responses to children who broke the law. At least part of the fall in FTEs registered in the year ending March 2008, occurred after the first formal announcement of the new target and of plans for additional options for informal diversion. The trend that commenced in 2007 paved the way for, and encouraged, a more child-friendly approach rather than constituting evidence that such an approach was already dominant.

An alternative analysis to that of Roberts et al, (2019), conducted for the Ministry of Justice, tends to support such an assessment, concluding that:

*'changes in policing practices appear to be the most likely (but probably not the only) driver of both the increase and then the decrease in the number of FTEs' (Sutherland et al, 2017: 4).*

Acknowledging that the decline in FTEs began prior to the publication of *YCAP*, the authors suggest that police forces may have refocused their activities in anticipation of the sanction detection target coming to an end and an increased policy focus on the diversion of children. This shift in policing would have allowed underlying falls in youth crime, and the reduction in some of the *'risk factors associated with youth and antisocial behaviour and crime'*, to kick start a decline in FTEs in advance of the publication of the high profile announcement contained in *YCAP* (Sutherland et al, 2017: 2). No doubt many youth justice practitioners also welcomed the opportunities for increased diversion that this provided.

## ● Better out than in ....

Nothing in the above analysis undermines the conclusion that there has been a long term fall in the underlying level of youth crime; rather it seeks to account for recent fluctuations in detected youth offending around that trend by reference to the predictable outcome of the successive implementation of two contrasting central government targets, without having to posit dramatic changes in children's behaviour. While it can be stated with some confidence that levels of youth crime has continued to fall, it is not possible to determine by how much since, as the National Audit Office (2010) has observed, the relative impact of children's lawbreaking and of government targets on the official statistics, cannot be disentangled.

The fact that the volume of detected youth offending can be so readily influenced by changes in performance indicators does, however, pose deeper questions about the impact of policy on children in trouble. As noted above, the New Labour administration of the late 1990s encouraged early intervention in the form of formal sanction, reinforcing an already punitive and interventionist climate towards children who broke the law that had emerged some years previously. The number of children who were prosecuted rose as a consequence, even while overall detected offending declined (Muncie, 2008). The sanction detection target can legitimately be understood as a logical culmination of that approach, leading to a corresponding sharper expansion in the criminalisation of children. The rise in detected youth crime generated sensationalist and unhelpful media reporting, suggesting that children's delinquent behaviour – and particularly offending by girls (an issue considered in more detail below) (Sharpe, 2012) – was spiralling out of control. This in turn exacerbated a process, noted



by the United Nations Committee on the Rights of the Child (2008), of demonisation of children, sustaining a cycle of intolerance (National Association for Youth Justice, 2011).

Moreover, from the perspective of individual children, this effective lowering of the threshold for entry into the formal criminal justice system was potentially damaging since a criminal record represents a considerable constraint on future prospects (Sands et al, 2018). There is a wider social concern too. A sizeable body of evidence confirms that early induction into the youth justice system is '*criminogenic*': it increases the risk of recidivism (McAra and McVie, 2015; Petrosino et al, 2013). Net-widening provisions emanating from a determination to appear tough on law and order, such as the sanction detection target, are thus in equal measure inherently unfair, damaging to children's longer-term wellbeing and likely to increase overall levels of victimisation.

Conversely, strategies of maximum diversion, wherein youthful misbehaviour is met wherever possible by an informal response, are associated with desistance from serious offending:

*'youth justice systems ... which take a punitive approach to youth offending, or fail to address the flows of young people through the system, are far less successful (in terms of reducing the risk of reconviction) than those predicated on an integrated diversionary approach'* (McAra and McVie, 2018).

These empirically verifiable outcomes are underpinned by two associated theoretical insights, explored in more detail later in the report. First, children's criminal behaviour tends to diminish rapidly as they mature and make the transition to adulthood; second, this natural process of '*growing out of crime*' is compromised by contact with the criminal justice system (Rutherford, 1992).

Such an understanding influenced responses to children in trouble during the 1980s which were informed by a philosophy of '*minimum intervention*' (Smith, 2013: 6) and added to the evidence base by delivering a large reduction in the criminalisation of children without any discernible corresponding rise in the level of youth crime (Haines and Drakeford, 1998).

The FTE target – which effectively raises the threshold for formal criminal justice intervention – both accords better with the research evidence and is indicative of a more child friendly approach to youth justice. (As argued earlier in the report, the extent to which it exemplifies progress towards a *child first* approach is debateable.)

Moreover, the sustained progress against the FTE measure, constitutes something of a natural experiment that can shed further light on the nature of effective responses to children who have broken the law. If, as New Labour contended in the 1997 White Paper '*No More Excuses*' (Home Office, 1997), a failure to clamp down on early indicators of youth criminality, and a widespread use of diversion from the justice system, would encourage further offending, then one would anticipate that any attempt to reduce significantly the number of FTEs could show only short-term gains: children benefitting from such lenience would be more likely to offend in future. On this account, one would therefore expect any diminution in FTEs to be time-limited and followed by a subsequent bulge as the failure to impose formal sanctions led to increases in lawless behaviour. The fact that a dramatic reduction in detected youth crime has been sustained for more than a decade offers an empirical refutation of the purported benefits of early induction to the youth justice system.

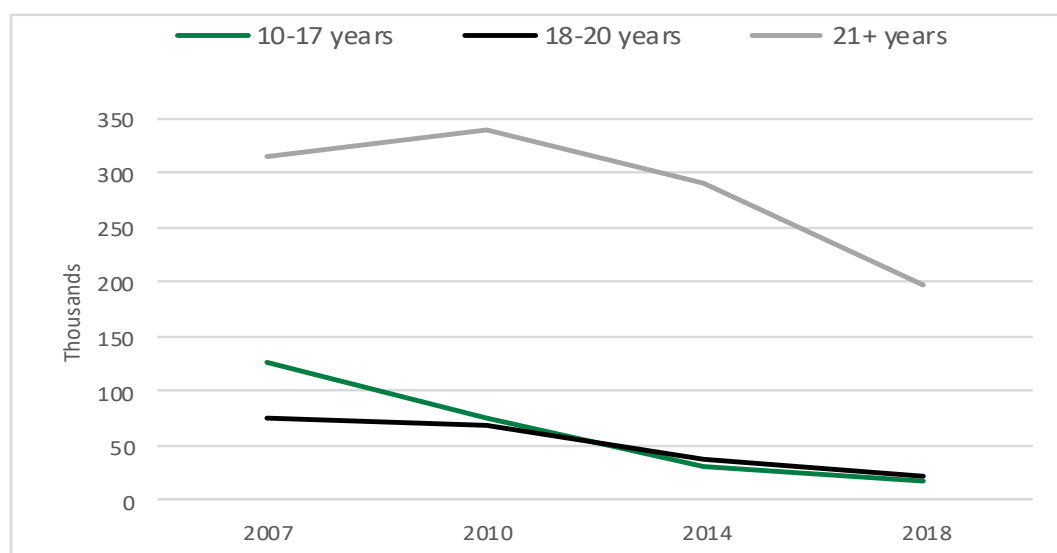
A further indication that keeping children out of system, through measures such as the FTE target, encourages desistance is to be found in the data for detected offending by adults. As shown in Figure 5, between 2007 and 2018, there were declines in the number of substantive disposals recorded against children, young adults (aged 18-20) and individuals aged 21 years and older, but the fall for the former group was considerably greater than for the other two (87%, 56% and 37% respectively). The reduction for young adults commenced later and the rate of decline was more modest than that for children. However, it began to accelerate from 2010 onwards and, between 2014 and 2018, was at a level close to that of the younger cohort. A credible explanation of this trajectory is that it reflects the longer term benefits of the increased diversion of children from the formal reaches of the youth justice system; those who avoided criminalisation as a child, were able more easily to make the transition to a non-offending adult lifestyle. Such patterns would be consistent with the fall in the child population percolating through to the older age group with an anticipated delay in the figures of two years to three years.

Detected offending for older adults continued to rise until around 2010, but thereafter started to drop, gathering pace from 2014, at the point when any beneficial impact from the introduction of the FTE target might be expected to have filtered through to those in their twenties. The 'natural experiment' has accordingly provided further empirical evidence of the positive impact of diversion from the criminal justice system on desistance over the longer period. Concerns that a failure to respond robustly, at the first signs of children's lawbreaking, would encourage further offending, have proved misplaced.

**Figure 5**

**Decline in detected offending for different age groups: selected years (indictable offences)**

Derived from Ministry of Justice, 2013; 2019b



The NAYJ therefore welcomes the FTE measure, the decriminalisation of large numbers of children that has flowed from its introduction and the continued focus on diversionary responses to children's lawbreaking. However, the Association remains concerned that the rediscovery of diversion has been largely a pragmatic response to the imperatives of austerity politics. In this context, the adoption by the Youth Justice Board of a commitment to minimum intervention, albeit that this commitment is yet to be supported in case management

guidance, is to be applauded. While punitive residues continue to influence youth justice policy, albeit to a lesser degree than hitherto, the gains of recent years may yet prove to be fragile and vulnerable to political reversal unless a philosophical adherence to principles of maximum diversion becomes fully embedded across the sector.

A further concern, already noted, is that the fall in throughput of the youth justice system has been used to legitimise considerable reductions in resources to youth offending teams, despite the fact that much of the recent decline in detected offending reflects a different response to youth crime rather than its absolute attenuation. The successes in relation to the FTE target have in part been realised precisely because youth offending teams have increasingly focused on non-statutory, informal, preventive work, delivery of which - in the absence of a healthy youth work sector - has tended to fall to youth justice staff (Deloitte, 2015; Youth Justice Board, 2015). Workload has not accordingly fallen to the extent suggested by statutory caseloads, and budget cuts put at risk services provided to children who come to the attention of the police but are not formally criminalised. Considered against Haines and Drakeford's (1998) admonition that a *child first* approach must address issues of equality and disadvantage, such concerns are of fundamental importance to the future direction of youth justice.

Roger Smith has recently observed that motivations for the current wave of diversion, being closely linked to a reduction in FTEs, reveals implicit assumptions about a recognition that children are liable, because of their stage of development, to make mistakes. He argues that while according with:

*'more radical arguments, such as those associated with labelling theory and the effects of criminalisation, it can also be seen as establishing a relatively limited frame of legitimacy for diversion'* (Smith, 2020).

It does not allow multiple 'second chances' and, although reducing FTEs may have a powerful impact on reducing system throughput, it does nothing to challenge the criminalisation of children whose offending is serious or persistent. In other words, the process is still one that allocates individual responsibility to children for their behaviour, who continue to be seen as 'the problem', rather than providing non-stigmatising support to disadvantaged children as a matter of rights and social justice (Smith, 2020).

Finally, the political commitment to diversion has arguably relied in part on the reality that youth crime is in any event falling. To the extent that there is a relationship between the economy and crime, albeit a mediated one, the continuation of that contextual backdrop cannot be guaranteed. The development of a rights compliant, evidence informed, ethically defensible, *child first* underpinning for youth justice practice is urgently required.

## Chapter 4

# This is what youth crime looks like

### ● There's a lot of it about

If the precise measurement of youth crime is rendered problematic by a range of epistemological difficulties, two things are clear. First, risk-taking behaviour - including lawbreaking – is quite common during the period of transition associated with the teenage years and such behaviour has consistently generated concern among adults throughout history. As Geoffrey Pearson (1983) argued in his classic study, each generation tends to look back to a period when young people were less unruly than in the present day:

*'The present ... is extremely tense. But the past, say the accumulated traditions of our national culture, was a 'golden age' of order and security.... 'Twenty years ago', which conveys the sense of a generational decline is the slogan most commonly heard'* (Pearson, 1983: 7 and 9-10).

Adults, he argues, tend to understate the delinquency of their own youth while exaggerating that of contemporary children.

The increased prevalence of offending during adolescence is confirmed by self-report studies: for instance, the Offending Crime and Justice Survey found that, over a four year period, almost half of young people aged 10 – 25 years had committed at least one of 20 core offences (Hales et al, 2009). Estimates from the Edinburgh Study of Youth Transitions and Crime suggest a much higher prevalence: 96% of the sample of 4,300 young people admitted at least one episode of lawbreaking by age 24 (McAra, 2018). Surveys of this nature also highlight the second most significant fact about youth crime: most of it is relatively minor: *'for example, minor shoplifting, graffiti, not paying the correct bus fare, minor breach of the peace'* (McAra, 2018: 6).

While, as outlined above, official statistics understate the extent of youth crime, they also, and for similar reasons, tend to exaggerate its seriousness. Minor incidents are more likely to remain undetected because victims are less inclined to report them and, if the police are notified, resources necessary for detection and processing such cases may be inadequate. Where children engaged in such activities are apprehended, the authorities frequently use their discretion to avoid a formal outcome. While this has been a longstanding response, and children who come to police attention typically have substantially lower rates of prosecution than adults, this diversionary dynamic has been reinforced by the FTE target. The reduction in the number of children who receive a formal youth justice sanction is a manifestation of the increased filtering of more trivial matters out of the system and a corresponding rise in the over-representation of more serious lawbreaking among those incidents that continue to attract a formal disposal. Data for detected youth crime hence give a distorted picture of youthful offending. In this context, self-report studies provide a more balanced portrayal. The MORI youth survey, for instance, demonstrates that theft and anti-social behaviour (ASB) (however the latter was understood by respondents) were the most common, by far, of offences reported by school age children: in 2009, 80% of children in pupil referral units who admitted having offended in the previous 12 months had engaged in stealing and 79% in ASB;

the equivalent figures for children in mainstream school were 74% and 77% respectively (Anderson et al, 2010).

Media depictions of children's lawbreaking tend to focus on high profile, more serious, incidents, such as robbery, violence against the person and sexual offending. While concern about the forms of lawbreaking likely to engender the most serious harms is understandable, the emphasis can give a misleading picture of the prevalence of such behaviours, and it is accordingly important to be clear about the relatively petty nature of most youth crime.

In spite of the impact of the FTE target, which has reduced the proportion of minor incidents that are captured in official statistics, such offences continue to account for most detected youth crime. Youth Justice Board statistics, for instance, indicate that, in 2019, 81% of 'proven offences' had a 'gravity score' of three or less, on a scale of 1 to 8, where 8 is the most serious (Ministry of Justice / Youth Justice Board, 2020a: supplementary table 4.4). Analysis of *Criminal Justice Statistics* which categorise offences in a slightly different manner, indicates that theft was the most common indictable offence type leading to a substantive youth justice disposal in 2018, accounting for more than one in four of the total. As shown in Figure 6, the second largest category, responsible for nearly one in five formal sanctions, was that for drugs offences, many of which will have involved possession of small quantities of substances for personal use (Ministry of Justice, 2019b). There has been a marked fall in the proportion of sanctions imposed for criminal damage and arson, since 2016, from 19% to 3%, which is likely to reflect an increased tendency to deal with less serious matters that fall within that category informally (Ministry of Justice, 2019b). It should be emphasised too that, since these figures omit summary offences, they considerably overstate the gravity of youth offending because considerable numbers of less serious incidents are excluded.

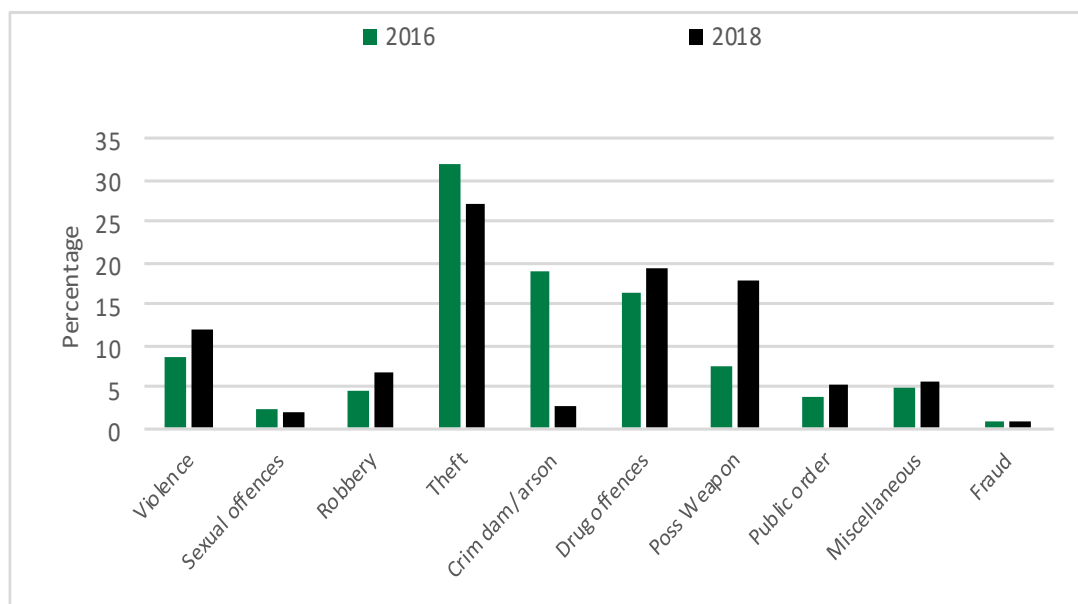
The proportion of crimes categorised as violence remains relatively low, accounting for just over one in ten of all indictable detected offences. This is a percentage point increase of around 3% when compared to 2016, but the *number* of offences within this category has actually fallen over that two year period, from 2,432 to 2,001, a decline of 18%. Robbery too is relatively infrequent accounting for 7% of the total in 2018; this represents a 3 percentage point rise since 2016, and the number of offences has also risen slightly from 1,131 to 1,178. Just 2% of indictable incidents involve sexually harmful behaviour and the number of detected sexual offences committed by children has fallen by 51% over the past two years (Ministry of Justice, 2019b).

While some offences falling within these categories can be serious, it would be a mistake to assume that they all are: 'sexting' – the digital sharing of sexual imagery – would for example be classified as a sexual offence. During 2018, 40% of violent episodes and 37% of sexual offences attracted a youth caution or youth conditional caution, indicating that they were below the level of seriousness that warrants prosecution in the public interest (Ministry of Justice, 2019b).

**Figure 6**

**Children receiving a youth caution, youth conditional caution or conviction, by offence type, as a percentage of all indictable offences**

Derived from Ministry of Justice, 2019b



## ● Point blank

Perhaps one of the most worrying indicators in Figure 6 is the considerable growth, from 8% to 18%, between 2016 and 2018, in the proportion of all offences that involve possession of a weapon. Part of this increase might be understood as a consequence of a growing media and policy focus on youth violence and the use of weapons, reflected for instance in legislation providing for Knife Crime Prevention Orders and the earlier introduction, in 2015, of mandatory custodial penalties for a second offence of knife possession for children aged 16-17 years.<sup>19</sup> This growing public concern may have led to a higher level of reporting of weapons possession to the police by agencies, such as schools, who might previously have dealt with the issue internally. Detection is also likely to have increased as a consequence of the introduction of various forms of enforcement related activities – such as the deployment of knife arches and automatic searches at some venues. The nature of contemporary discourse is also such that possession of any weapon is rarely met with an informal response from the police because it is regarded more seriously than it might previously have been (Kinsey, 2019).

Nevertheless, the trend is a concerning one that warrants further consideration. Perhaps the first point to note is that while detected knife and offensive weapons offences by children has been rising sharply since 2013, this should be seen in the context of an equally pronounced decline in the period prior to that year, as shown in Figure 7. As a consequence, when viewed over the longer term, 10% fewer children were given cautions or convicted for such offences in 2019 than ten years earlier (Ministry of Justice, 2020c: main tables). It seems likely that part of the explanation for the fall in the earlier period is the impact of the FTE target. Conversely at least some of the more recent increase will be explicable in terms of the increased policy focus on youth violence and knife crime: the reversal of the trend coincides with, rather than pre-

<sup>19</sup> The provision was contained in the Criminal Justice and Courts Act 2015 and implemented from 17 July 2015

dates, growing public concern which in turn triggered the introduction of legislation designed to increase the use of custody for such behaviour. As Grimshaw and Ford (2018: 4) suggest:

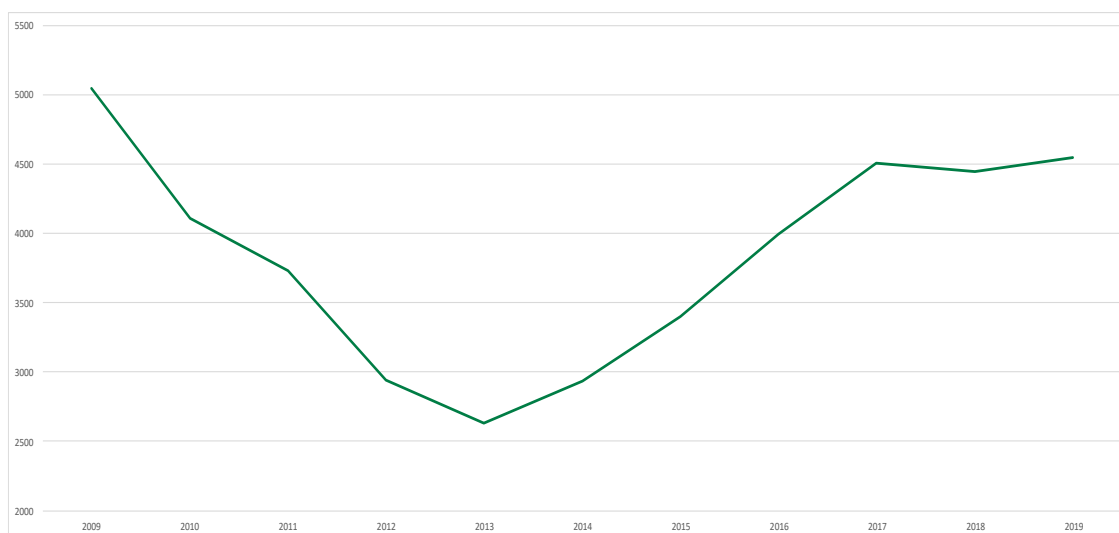
*‘this increase likely reflects a more proactive approach to this crime type, rather than being indicative of increases in real levels of knife carrying’.*

The impact of the legislation can also be discerned in the outcomes experienced by children. Between 2014 and 2019, while the number of knife and weapons offences committed by children rose by 55%, the number of custodial sentences imposed for such matters grew by 60% (Ministry of Justice, 2020c: main tables).

**Figure 7**

**Knife and offensive weapon offences resulting in children receiving a caution or conviction: 2009 -2019**

Derived from Ministry of Justice, 2020c: main tables



It has been argued in previous sections of the report that statistics on detected crime inevitably fail to capture the extent of the underlying behaviour that leads to some children receiving a formal sanction. In this context, it is worth noting that self-report data show something of a mixed picture. Between 2011 and 2016, the proportion of 10-15 year-olds who admitted carrying a knife in the previous 12 months declined slightly. On the other hand, the proportion who reported that they personally knew somebody who carried a knife fell between 2011 and 2014, but rose in the following two years (Grimshaw and Ford, 2018).

A major study of children born in the UK in 2000 and 2001, found that less than 3% of 14-year-olds self-reported ever having: *‘carried a knife or other weapon for your own protection because someone else asked you to or in case you get into a fight?’* (Smith and Wynne-McHardy, 2019: 25). While the overall level of weapons carrying was accordingly very low, there were significant differences between children who did and who did not do so. For instance, children who carried weapons were more likely to have parents who were not in work than those who did not (29% against 15.1%); and were more likely to come from families whose income was in the lowest quintile (29% against 18.5%). Carrying weapons was also significantly associated with: school exclusion; frequent truanting; being bullied; having poor relationships with parents; feelings of isolation; having self-harmed; and having a worse quality



of life. Children who reported carrying a weapon were almost three times as likely to rate their life quality as poor (12% against 4.2%).

Given other research which suggests that children often carry knives for their own protection (see for instance, Smith and Hughes, 2019), the relationship with perceived levels of safety is of particular note. Children who said that they had carried a weapon were more than twice as likely to report that their area of residence was not a safe one (16.7% against 7.2%). They were also much more likely to have experienced various forms of victimisation, as shown in Table 2. Overall, 81.3% of children who carried weapons reported that they had experienced victimisation compared to 48.8% of children who had not done so.

**Table 2**

**Children's reported weapons carrying by experience of victimisation**

Derived from Smith and Wynne-McHardy, 2019

Nature of victimisation	Percentage reporting victimisation	
	Children who have not carried a weapon	Children who have carried a weapon
Insulted, called names, threatened or shouted at	42.6%	72.5%
Physical violence (pushed, shoved, hit, slapped, punched)	21.8%	62.1%
Hit with or had a weapon used against them	2.5%	30.9%
Had something stolen	7.1%	26.4%
Had an unwelcome sexual approach or been sexually assaulted	2.5%	11.9%

Weapons carrying by children is thus rare but where it occurs, is clearly linked to various forms of structural disadvantage, inequality and personal hardship. Significantly, it is also associated with personal victimisation and the proximity to unsafe environments, reflecting evidence of the close relationship between poverty and violence (see for instance, McAra and McVie, 2016). Knife crime is thus best conceptualised as, what some children may see as, a legitimate reaction to their wider circumstances (Palasinski, 2013). The environments in which such children approach adolescence are ones where carrying a weapon is viewed as a normalised response (Smith and Hughes, 2019). This analysis gains credibility from research suggesting that adolescents who are exposed to risk of serious harms that emanate from outside the family home, can expect minimal support from child protection services (Lloyd and Firmin, 2020) and have very little trust in the police in the capacity of the police to protect them (Smith and Hughes, 2019).

Perhaps unsurprisingly, children who carry weapons are correspondingly prone to have engaged in other forms of risk taking and offending behaviour. As shown in Table 3, children who report weapons carrying are six times more likely than those who do not to have tried drugs and more than three times as likely to have smoked cigarettes. Such risk taking behaviour includes offending: the former group of children are seven times as likely to admit theft.



**Table 3**

**Children's reported weapons carrying by other forms of risk taking**

Derived from Smith and Wynne-McHardy, 2019

Nature of victimisation	Percentage having engaged in the behaviour	
	Children who have not carried a weapon	Children who have carried a weapon
Tried drugs	5%	33%
Smoked	16%	51%
Pushed, shoved or hit someone	30%	80%
Stolen from someone or from shop	4%	28%
Been stopped or questioned by police	15%	55%

Much of the current discourse on knife crime, understandably links it to gang culture wherein carrying a knife is '*part of the lifestyle, part of the deal*' (21 year old male, cited in Harding, 2020: 41) and the emergence of 'out of town' drug distribution networks, commonly referred to as 'county lines' which are, in turn, often, but not always, associated with gangs (Windle et al, 2020). The involvement of children in those networks put them at risk of a range of serious harms, including '*violence, intimidation and emotional abuse*' at the hands of their, or rival distributors, residing at addresses used for the purpose of dealing where they may experience trauma, addiction, a heightened risk of arrest and incarceration and restricted longer term life opportunities (Windle et al, 2020: 69). According to the National Crime Agency (2020), one third of homicide victims, and two thirds of suspects, are known drugs users or suppliers. It is clear that most children involved in 'county lines' are subject to a combination of coercion, and various forms of exploitation, made more effective by the absence of economic security, chaotic home lives and the potential allure of '*attaining the trappings of consumer culture*' (Windle et al, 2020: 71). Encouragingly, government policy and that of other criminal justice agencies recognises that the exploitation of children is at the heart of 'county lines' (HM Government, 2018; National Crime Agency, 2020), allowing for the possibility that children involved in forms of behaviour which might hitherto have been seen as serious offending might be treated as victims of child criminal exploitation (CCE), even if '*the activity appears consensual*' (HM Government, 2018: 48).

This potential reconceptualisation of children involved in illegal drugs markets is of considerable importance, providing an alternative lens through which to understand their behaviour other than that of the criminal justice system, and offering the prospect of responses other than those involving criminalisation. Moreover, non-criminalising responses in this context would challenge the limitation associated with the logic of diversion identified by Smith (2020) and discussed above, since they would not be restricted to children committing minor offences for the first time. The number of children identified as potential victims of such exploitation is not insignificant. During the final quarter of 2019, data on referrals to the National Referral Mechanism were, for the first time, classified in a way that allowed the disaggregation of referrals made on the basis of CCE. During that three month period, 283 children were referred on those grounds out of a total of 1,694 (Home Office, 2020a: data table 3). The extent to which this reconceptualisation will, in practice, ensure the safeguarding, rather than criminalisation, of this group of extremely vulnerable children is as yet unclear.

There appear to be, at least two, different kinds of issue. First, the question of identification. James Windle and colleagues (2020) have argued persuasively that recognising abstract

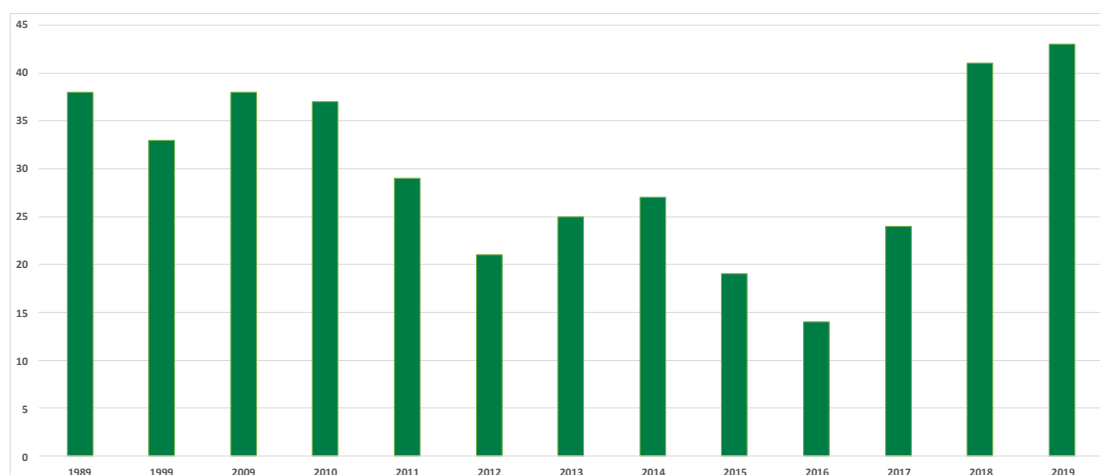
concepts such as vulnerability, victimisation and exploitation may be difficult for under resourced practitioners, more used to assessing propensities to offend. Social constructions of victimhood are binary, and dictate that victims are ‘ideally’ weak and blameless. Children involved in ‘country lines’ may fit neither of those stereotypes. Indeed, they might, on the contrary, appear to be making a lifestyle choice, and, on occasion, engaging in potentially serious harmful behaviour, thereby inviting a criminal justice response and making the attribution of victim status less likely. Second, it is evident that even where children are identified as subject to CCE, existing services are not currently well equipped to know how to work with them and keep them safe (Child Safeguarding Practice Review Panel, 2020; Lloyd and Firmin, 2020; for a detailed overview of the challenges involved in an individual case, see Drew, 2020). This second difficulty is exacerbated by the fact that children subject to CCE may not see themselves as victims, nor recognise their exploiters as exploitative. They may accordingly be resistant to engaging in interventions predicated on such a conceptual framework, particularly given that mistrust of authorities is widespread in the communities from which such children are typically drawn. Successful engagement with such children will require persistence, a commitment to building relationships and a capacity to ‘see vulnerability beneath tough exteriors’ (Windle et al, 2020: 74).

As indicated above, these developments notwithstanding, there is little evidence of an increase in the overall levels of violent offending by children. There may however be some early indications of a rise in children’s involvement in homicides. Levels of homicide are less influenced than other forms of youth crime by political considerations and shifts in practice because detection rates are much higher and any alternatives to prosecution extremely unlikely. Children are rarely convicted of murder. Moreover, there was a marked reduction in such convictions between 2009 and 2016, from 23 to seven. There were however sharp rises in 2018 and 2019, with 26 and 29 children being convicted of murder in those years respectively (Ministry of Justice, 2020a). The volume of homicides – that is murder and manslaughter – committed by persons under the age of 18 years, has been remarkably stable over time, albeit with fluctuations. As shown in Figure 8, the combined annual figure for children convicted of murder or manslaughter stood at 38 in 1989, 33 in 1999 (Nacro, 2002) and 38 in 2009. Figures for the most recent two years (41 and 43 respectively) are accordingly a little high by historical standards (Ministry of Justice, 2020a). Whether this represents the start of a longer term trajectory or a further fluctuation remains to be seen.

**Figure 8**

**Children convicted of homicide (murder and manslaughter): selected years 1989-2019**

Derived from Nacro, 2002; Ministry of Justice, 2020a



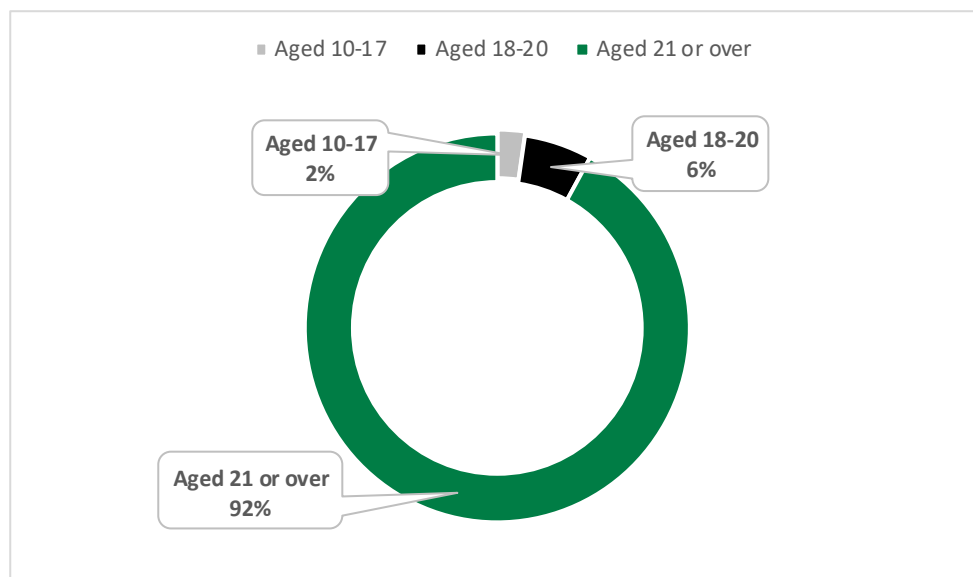
## ● Changes

Adolescence is a period of enhanced risk taking, as children assert their individuality, move towards independence and the influence of peers gradually supplants that of parents (Coleman, 2011). This characteristic explains the relatively high level of lawbreaking during the teenage years, as children naturally engage in experimentation and test boundaries. As a consequence, children are more likely to commit offences than their adult counterparts; nonetheless, because the former constitute a minority of the overall population, adults are responsible for a much greater volume of overall crime. As shown in Figure 9, during 2018, children committed just one in every 50 detected offences (summary and indictable), a proportion that has fallen from 11% in 2008 as consequence of the sharper decline in FTEs for that age group. By contrast, over 92% of crime was committed by adults aged 21 years and over (Ministry of Justice, 2019b).

**Figure 9**

**Detected offending by age range (indictable and summary offences): 2018**

Derived from Ministry of Justice, 2019b

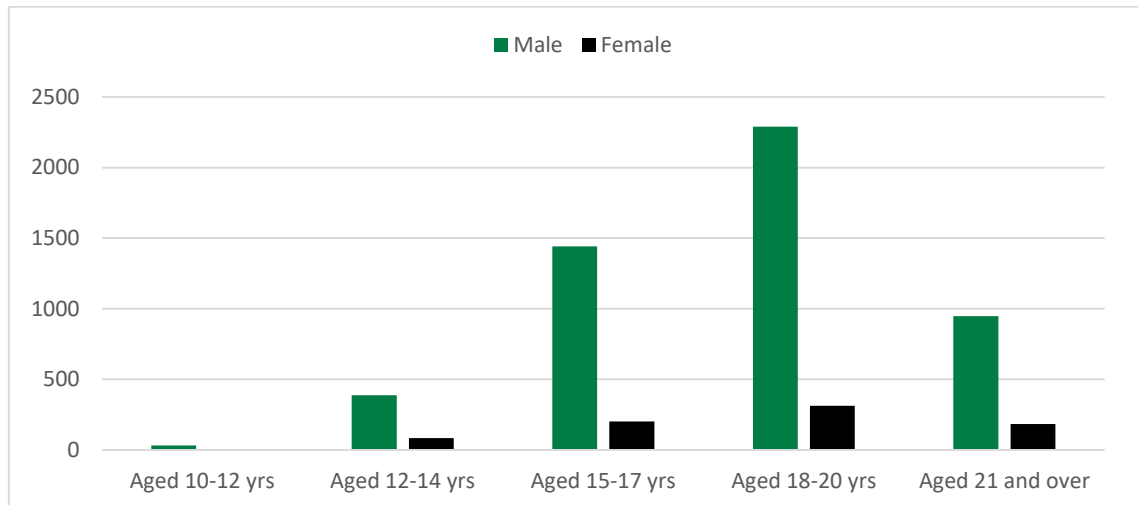


If offending tends to peak during adolescence, it is also clear that it diminishes rapidly thereafter. There is substantial evidence that as young people make the transition to adulthood there is an accompanying shift to a more law-abiding lifestyle. Indeed, falling criminality as age increases (the 'age-crime curve') has been called '*one of the brute facts of criminology*' (Hirschi and Gottfredson, 1983: 555). In 2016, for instance, the rate of offending per 100,000 of the population aged 15-17 years was four and a half times higher than that for those aged 21 years or older (see Figure 10 below). Data from the Edinburgh Study of Youth Transitions and Crime indicate that 56% of children had desisted completely from offending by age 18, rising to 90% at 24 years of age (McAra, 2018).

**Figure 10**

**Indictable offences per 100,000 population by age bands: 2016**

Derived from Bateman, 2017



Although the reasons for this phenomenon remain contested, there are several potential mechanisms by which maturation might be linked to desistance. Sociological explanations, for instance, tend to emphasise the changing social roles that children increasingly occupy as they approach their late teens and early adulthood. They tend to ‘*grow out of crime*’ (Rutherford, 1992) as they become independent of their parents, enter the jobs market, engage in long term relationships and take additional responsibility for the care of others (Nugent and McNeill, 2017). These new roles are associated with expectations of different behaviours and, from a practical perspective, allow less time for hanging around the street with groups of friends, an environment that can readily give rise to activity that might attract police attention. Indeed, it is sometimes suggested that the process of desistance from crime frequently involves the child actively disassociating themselves (or ‘*knifing off*’) from those with whom they had previously offended (Maruna and Roy, 2007). This points to the role of agency in desistance, as children who have hitherto been involved in criminal activity make an active decision that they want to go straight, perhaps, in part at least, in response to their changed social circumstances.

Other, more psychologically-leaning, accounts point to the impact of maturation on improved impulse control, a greater capacity for consequential thinking and increased empathy for others (Steinberg et al, 2015). These forms of explanation are not, of course, mutually exclusive since social and psychological changes are contemporaneous. They may be mutually reinforcing. Both interact to provide the context in which children exercise agency and to determine the pathways by which they attain adulthood.

Implicit in each of these forms of explanation, is the idea that maturity leads to a shift in the young person’s identity as they come to regard themselves as an adult and that the shift is one that promotes desistance in most cases (see for instance Hazel et al, 2017). However, as McNeill (2014) has pointed out, successful transition in this regard is not purely an individual phenomenon since offending, and desistance from it, are social processes in which the state and the community play an important role, in enabling children to make the shift. The provision of legitimate opportunities for full participation in the adult world, for those who

have been in trouble as children, is a crucial element in making desistance more likely. Where employment opportunities are fewer, access to independent accommodation restricted, and discrimination against young people with criminal records more entrenched, the prospects of, and incentives for, children to move on are limited. There is accordingly an associated risk that adolescence, for the most disadvantaged groups of young people, will extend beyond the teenage years, inhibiting the natural processes of growing out of crime (see for instance, Pitts, 2008). Austerity measures, the attendant increase in inequality and a failure to provide adequate levels of support to children in conflict with the law have the potential to exacerbate such outcomes.

It is also clear that youth justice policy and practice, as part of that wider societal response, can itself encourage or hinder maturational development. The idea that, if left to their own devices, most children will naturally stop offending, was a central tenet of practice with children in trouble during the 1980s which aimed to minimise children's contact with the youth justice system precisely because such contact was understood as interfering with natural developmental processes (Haines and Drakeford, 1998). New Labour's rationale for reform of the youth justice system challenged this consensus. Relying on the Audit Commission's (1996) influential 1996 report, *Misspent Youth*, the then Home Secretary asserted that '*the research evidence shows that [growing out of crime] does not happen*' (Straw, 1997).

The Audit Commission's position derived from a simplistic reading of the data on detected crime to conclude that the peak age of offending had risen, implying that maturation was no longer so clearly associated with desistance. But, as outlined above, the link between detected offending and actual lawbreaking is highly attenuated. While it was true that figures for the former showed an increase in the age at which children were subject to formal youth justice outcomes, such a pattern was consistent with a number of developments not considered by the authors of the report. The period selected by the Audit Commission was one in which children were increasingly diverted from the formal justice system; younger children were particularly likely to benefit from such diversionary impulses, leading to an increase in the average age of those entering the system. The data were accordingly not indicative of a failure of older children to give up offending but, on the contrary, of the effective decriminalisation of large numbers of their younger counterparts (Bateman, 2015). New Labour policies predicated on the necessity of intervening early through the youth justice system to '*nip offending in the bud*' (Home Office, 1997) were accordingly vulnerable to criticism and based on a flawed understanding of the evidence.

A similar dynamic has been associated with the fall in FTEs which, as shown later in the report, has advantaged younger children in particular, leading to a rise in the average age of those receiving substantive disposals: in 2007, the peak age of offending for males was 17 years (Nacro, 2009); by 2013, it had risen to 19 years (Ministry of Justice, 2014). More recent figures are not available at this level of (age specific) detail but, as shown in Figure 10, the peak age of both male and female offending in 2016 was between 18 and 20 years. This rise in the peak age of detected offending is however no more evidence for children failing to grow out of crime than it was in the 1980s.

## Chapter 5

# This is what a child in conflict with the law looks like

### ● What's a poor child to do?

As previously noted, behaviour that infringes the criminal law is widespread among teenagers from all backgrounds, but most of that illegal activity does not result in a formal youth justice sanction. The most recent national self-report study involving children suggested for instance that less than half of those who had offended within the previous twelve months were caught by the police. Moreover, for those who were apprehended, the most common outcome, accounting for 28% of such cases, was that nothing happened as a consequence. A further 20% of children indicated that they had to apologise to the victim. It is not clear from the report whether such apologies were accompanied by a formal disposal or not (Anderson et al, 2010).

But if criminal behaviour is common among teenagers, children who come to the attention of criminal justice agencies are *'disproportionately drawn from working class backgrounds with biographies replete with examples of vulnerability'* albeit that poverty is frequently reframed as individual shortcomings (Yates, 2010: 16; McAra, 2018). A number of reasons have been proposed for this disproportion. First, there is a correlation between economically deprived areas, characterised by above average levels of unemployment, and higher levels of crime and victimisation (Bates, 2015). Residence in such neighbourhoods is accordingly much more likely to bring children into contact with forms of illegal behaviour which become part of the fabric of their everyday lives, particularly as geographical deprivation is relatively persistent over time, generating a *'social ecology of poverty'* (White and Cunneen, 2015: 20). It is this geographical concentration that explains, at least in part, the significant overlap between young people who offend and those who are victims of crime: they are frequently the same cohort deriving from the same deprived areas (Smith, and Ecob, 2007).

Second, the experience of growing up poor is one that is typically associated with characteristics such as adverse family circumstances, poor schooling, and higher levels of ill health and subjective wellbeing, each of which increases the likelihood of offending (Smith and Wynne-McHardy, 2019). Moreover, the longer a child lives in poverty, the higher the chance that he or she will engage in delinquent activity. A US study found that the relationship between poverty and crime is largely longitudinal: the association between persistent poverty and persistent offending is much stronger than that between episodic spells of either. The chances of becoming a 'persistent offender' were increased by 80% for children enduring poverty throughout the first decade of their lives (Hay and Forest, 2009). As Kingston and Webster (2016: 2017) explain:

*'It is the longevity and recurrence of poverty that adversely influences family processes causing disruption and emotional stress. Long-term poverty influences the resources and therefore opportunities available to children and young people and their emotional security, and has the strongest impact on criminal involvement'.*

Third, children living in areas of high density housing are more likely to socialise in larger groups, in public spaces, thereby attracting attention from authorities for behaviour which

might be overlooked in other settings. This increasingly distinguishes children resident in poor communities from their better-off counterparts as the consequences of austerity have further limited the formers' access to positive, extra-curricular, leisure activities – just one of the indicators that poverty is now '*entrenched from birth to work*' (cited in Davies, 2019). This underlying dynamic is reinforced by a circular process as high crime areas inevitably attract higher levels of policing and increased prospects of detection for those children who do break the law. In this context, it is notable that the definition of anti-social behaviour, as activity that causes harassment, alarm or distress to persons not of the same household, impacts disproportionately on children who spend more time in public spaces, making it more likely that they will be subject to proceedings in respect of conduct which may not in itself be contrary to the criminal law. In combination, such experiences lead to a perception on the part of poorer communities that they are over-policed, undermining levels of trust in authority, and contributing to '*a labelling by area*' (Fitzgerald et al, 2002: xix).

The heightened risk that children's offending in particular communities will be more readily identified, and subsequently processed, is exacerbated by the operation of the youth justice system itself which, it has been argued, consists of a '*series of filters*' that tend to operate to the disadvantage of children whose circumstances are embedded in '*economic adversity*', and reinforce each other at every decision-making stage (White and Cunneen, 2015: 19). It is not just that the criminal justice system tends to focus on behaviour associated with marginalised young people, while ignoring much of the harm caused by white collar and corporate crime, which dwarfs the proceeds of youth crime, although that it is undoubtedly true (Tombs and Whyte, 2003). It is also clear that similar behaviour by middle-class and working class children might attract quite different forms of response. The decision-making of youth justice agencies, for instance is influenced by: the capacity of parents to ensure that their children's problematic behaviour is managed through psychiatric or counselling services; children's educational attainment or employment prospects; references from 'respectable' adult sources; and a range of other considerations that benefit children with greater access to social and economic capital.

Processes of this nature also help to explain the over-representation of minority ethnic children within the youth justice system (an issue considered further in due course) since the communities from which such children derive are disproportionately poor. In this instance, direct and indirect forms of discrimination, on the basis of ethnicity, exacerbate the impact of socio-economic disadvantage (Webster, 2015).

The disproportionate criminalisation of looked-after children is a subject that has rightly received considerable attention over the course of recent years (see for instance, Laming, 2016; Bateman et al, 2018; Day et al, 2020). Figures published by the Department for Education (2019a: national tables) indicate that looked after children are between three and five times as likely as their peers in the general population to be made subject of a formal youth justice disposal. These figures are moreover almost certainly an underestimation since they relate to those who have been continuously in care for twelve months or longer and almost half (49%) of children who acquire care status are looked after for periods shorter than one year (Department for Education, 2019a: national tables). It has been estimated that children in care who come into contact with the justice system are about seven times more likely to be incarcerated than their non-care equivalents (Day et al, 2020). Such overrepresentation is consistent with accounts predicated on a relationship between socio-economic status and contact with the youth justice system since the life experiences of children in care are typically characterised by high levels of abuse, neglect, victimisation, deprivation and other forms of adversity (Day et al, 2020).



Broadly speaking, attempts to account for higher levels of criminalisation among children in care have tended to focus on three forms of explanation (Staines, 2016; Day, 2020). The first notes that children in care share with other young people who offend, histories grounded in various forms of disadvantage which appear to make delinquent behaviour more likely; the factors that lead to children coming into care are associated with emotional and behavioural difficulties and lowered resilience. Adverse experiences prior to coming into care might accordingly make it more likely that looked-after children will behave in a manner that infringes the criminal law.

A second approach highlights the potentially negative consequences on children of the care experience itself, particularly issues such as placement instability, inconsistency in care and the negative influence of a peer group with shared backgrounds of privation. It points to structural features of the care system which exacerbate negative pre-care disadvantage and increase the prospect of criminalisation. Day et al (2020), for example, found that the experiences of looked-after children, particularly those in residential care placed out of their local authority area, often far from their families and communities and contrary to their wishes, contributed to them spending considerable periods of time on the street in the company of other, like minded, peers, out of education and away from adult supervision. The adoption of a *'street lifestyle was understood by those children as being, at least in part, a legitimate response to how they felt the care system had treated them'* (Day et al, 2020: 35). It was moreover conducive to forms of behaviour that contravened the law, as children strived to find ways of *'surviving'* in that environment. Structural considerations are thus manifested in different experiences, which are then exacerbated by subjective feelings of injustice among looked-after children, as the system appears to simultaneously propel them onto the streets and punish them for that lifestyle *'choice'*.

Finally, a lower threshold for involving the police as a mechanism of control, and responding to service shortcomings, combine to make it more likely that children's behaviour in a care setting will be managed through a criminal justice lens: the response to lawbreaking by children in the care system is more likely to result in a formal criminal justice sanction than in the case of equivalent behaviour exhibited by children who are not looked-after. Such dynamics are particularly at play for children placed in residential provision, which is more intensively policed than private homes, thereby promoting, and intensifying, lawbreaking and criminal justice responses to it (Howard League, 2016). If children from poorer communities are more likely to be criminalised as a consequence of spending time in public spaces, children in residential provision frequently have no access to private *'home'* space which is free from surveillance by authority. Stigmatisation of the care population and harsher sentencing which, in some cases, is intended to compensate for a lack of support in the community can operate to further disadvantage the care population when they appear in court (Bateman et al, 2018).

While logically distinct, it is clear that these explanatory models are intertwined in practice. As Staines (2016: 6) has convincingly argued:

*'Children who enter care having experienced abuse and trauma are then particularly vulnerable to being negatively influenced by relationships and experiences within care. This impact of this interaction is then exacerbated by involvement in the youth justice system itself, which can further criminalise looked after children'.*

The correlation with disadvantage becomes more pronounced in relation to children who are involved in more serious or persistent offending. A study of children in police custody for

instance established that ‘*general entrants*’ to the youth justice system each experienced an average of 2.9 ‘*vulnerabilities*’, but that the equivalent figure for boys affiliated to gangs was seven and, for girl gang affiliates was 9.5 (Khan et al, 2013). Longitudinal research, conducted for the Home Office, found that 48.1% of children engaging in ‘*serious violence linked behaviours*’ reported coming from ‘*low class*’ families and just 15% were from a ‘*high class*’ background. Fourteen percent of this group indicated that they had experienced maltreatment as a child (a potential under-estimate given that it relied on self-reporting), compared to 5.1% of those who had not engaged in such behaviour (Smith and Wynne-McHardy, 2019).

Patterns of this nature are confirmed in recent data derived from youth offending team assessments of children who were sentenced during 2018/2019 which indicate that such children ‘*exhibit a range of important, interdependent and interrelated needs*’ (Ministry of Justice/ Youth Justice Board, 2020b: 1). Using a classificatory system drawn from *AssetPlus*, the current youth justice assessment framework, the analysis explores the prevalence of 19 ‘*concern types*’ among a cohort of convicted children. The most common concern identified was in relation to ‘*safety and wellbeing*’ which was present for 88% of children. As shown in Table 4, five of the concern types were exhibited by 70% or more of children.

**Table 4**

**Prevalence of assessed concerns exhibited by sentenced children 2018/2019**

Derived from Ministry of Justice/ Youth Justice Board, 2020b

Concern type	Proportion of children exhibiting concern
Safety and wellbeing	88%
Risk to others	85%
Substance misuse	75%
Speech, language and communication	71%
Mental health	71%

Even more worryingly, more than one in five children were assessed as having between 15 and 19 concern types: conversely, just over one in ten displayed four or fewer. As might be anticipated, the number of concerns increased in line with the level of sentence imposed, as indicated in Table 5. Reaffirming earlier research which established that higher levels of deprivation are typically found among imprisoned children (Ministry of Justice/ Youth Justice Board, 2017), children sentenced to custody had the highest concentration of concern types: 39% were assessed as having between 15 and 19 concerns. Ninety seven percent of this group displayed a medium, high or very high risk in relation to safety and wellbeing (Ministry of Justice/ Youth Justice Board, 2020b: supplementary table 1.3a).

**Table 5**

**Number of assessed concerns per child by sentence type 2018/2019**

Derived from Ministry of Justice /Youth Justice Board, 2020b

Sentence type	Proportion of children exhibiting concerns			
	Number of assessed concerns			
	0-4	5-9	10-14	15-19
All sentences	11%	26%	41%	22%
First tier	18%	35%	36%	11%
Community	4%	18%	46%	31%
Custodial	3%	16%	43%	39%

Such findings provide a compelling evidence base that responses to children in trouble should focus on ensuring their longer-term wellbeing. They also make a powerful case for a *child first* approach that seeks to mitigate the impact of inequality which fosters youth crime and determines disproportionate levels of criminalisation for those children who have the fewest opportunities for social advancement.

## ● Worth the risk?

Any recognition of this body of evidence was hard to discern in the New Labour reforms of the youth justice system introduced by the Crime and Disorder Act 1998 and subsequent legislation, government protestations at the time that policy was evidence-based notwithstanding (Wells, 2007). Indeed the idea that addressing socio-economic considerations might provide a framework for understanding children's behaviour was explicitly rejected as '*excus[ing] ... young offenders*' (Straw, 1997). Not that the overwhelming evidence that youth crime was associated with various indicators of disadvantage was completely jettisoned; rather welfare needs were recast as factors that indicated the degree of risk that a child would offend or cause serious harm (Phoenix, 2009), ensuring that children in conflict with the law were seen as '*offenders first*'. This approach was formalised, in operational terms, by the Youth Justice Board through the development of *Asset*, a standardised assessment tool whose use was mandatory for youth offending teams. It ensured that '*risk of reoffending*' was captured, and measured in numeric form, through scoring of twelve domains of risk (Almond, 2012). The introduction, in 2009, of the '*scaled approach*', a framework that required that levels of intervention increased in intensity in line with the assessed risk of reoffending, guaranteed that children from the most disadvantaged backgrounds, those who manifested the greatest extent of welfare need, would be subject to the greatest punishment (Bateman, 2011).

More recently, the '*risk factor paradigm*', as the approach has become known, has come under extensive criticism for a variety of related shortcomings. First, it treats children as '*crash test dummies*' whose fate is largely determined by the risks which they embody, rather than active individuals with a capacity to make choices, albeit that their options may be constrained by their socio-economic position. As Case and Haines (2009: 20) point out, in reality: '*the active human agent may be a crucial determinant of any risk factor ... outcome*'. Risk-led interventions, because they prioritise professional assessments of risk over children's understanding of their circumstances and the meanings which they attach to those circumstances, also undermine the potential for establishing meaningful engagement between children and their supervisors, in spite of long standing evidence that relationships are pivotal to successful outcomes of youth justice intervention (Trotter, 2020; Creaney, 2014; Burnett and McNeill, 2005).

A focus on risk, moreover, directs practitioners' attention to correcting supposed, historical or current, pathologies in the child rather than to provision of future oriented support (Case and Haines, 2015). Finally, because the risk paradigm targets the posited deficiencies of individual children rather than understanding children's lawbreaking as a normalised response to the environment within which they grow up (France et al, 2012), it inevitably locates:

*'the responsibility (blame) ... with the young person and their inability to resist risk factors, rather than examining broader issues such as ... social class, poverty, unemployment, social deprivation, neighbourhood disorganisation, ethnicity'* (Case and Haines, 2015: 103).

In so doing, it also excuses authorities who have neglected to provide the necessary commitment, and resources, to tackle social inequality and absolves those agencies who have failed to provide the requisite levels of support to children who suffer as a consequence.

This is not to deny that there are statistical correlations between what are termed risk factors – such as not being in school or using drugs - and higher levels of offending. But research suggests that the influence of the child’s material surroundings is often sufficient to mediate the impact of many of these individual characteristics. In one American study, boys with no identifiable risk factors from the most disadvantaged neighbourhoods were fifteen times as likely to have committed serious offences as those from the most affluent areas; as shown in Table 6, the presence of additional ‘risk factors’ played a much bigger role in explaining the offending of boys from better-off localities than those living in poorer areas because the latter group were already much more likely to engage in such behaviour (Knuutila, 2010). Risk factors are, unsurprisingly, much more prevalent in disadvantaged communities; but such areas generate significantly higher levels of youth crime whether or not the individuals who engage in it display those risks.

**Table 6**  
**Percentage of boys committing serious offences by socio-economic status of area of residence and number of risk factors**

Number of risk factors	0	1 – 2	3 – 6
Most disadvantaged neighbourhood	3.4%	32.8%	56.3%
Least disadvantaged neighbourhood	51.3%	53.1%	83.9%

More recent evidence, from the Edinburgh Study of Youth Transitions confirms this hypothesis. Youth violence was found to be associated with poverty at the individual and household level, and that relationship persisted even when individual risk and protective factors were controlled for. The authors conclude that, for such reasons: *‘young people involved in violence should be conceptualized as vulnerable children rather than offenders’* (McAra and McVie, 2016: 71). The impact of structural factors is sufficiently strong that, while many children in contact with youth justice agencies will display more ‘risks’ than those who do not come to the attention of the youth justice system, predicting from an early age which children will or will not offend, on the basis of their risk profile, proves to be a futile exercise (Case and Haines, 2009).

In the light of such criticisms, another body of literature with a markedly different emphasis has become increasingly influential in recent years. Desistance theory focuses on understanding the process of how people change in ways that lead them to give up offending, a process for which, as we have already seen, has considerable empirical support from the fact that the large majority of children desist from crime as they make the transition to adulthood. While the change involved is most frequently *‘not engineered by the agents of the penal state, [this] is not necessarily to say that is unassisted’*; rather it is *‘enabled or impeded by a person’s associates and environments’* (McNeill and Graham, 2020: 16). From a youth justice perspective, the importance of such research is, accordingly, that it can provide an evidence-base for practice that supports desistance in children in conflict with the law and avoids forms of intervention that undermine it.

Given that starting point, effective practice from a desistance perspective is inevitably conceived as being future-orientated. Rather than addressing perceived deficiencies in the child, and exploring past offending in minute detail, a desistance informed approach builds on children's strengths, helping them to achieve their entitlements (Gray, 2020); it aims to instil a sense of hope that they can alter their destiny and foster the confidence to do so; and it seeks to empower children to realise their goals and aspirations (Burnett and Maruna, 2004). Rather than objects of intervention, children are viewed as subjects in charge of their own process of change whose engagement with the supervisory process is predicated on the fact that they understand that they benefit from so doing (Bateman and Hazel, 2013).

Maruna and Farrell (2004) have argued persuasively that there is a distinction between primary desistance, which consists in ceasing offending, and secondary desistance, a longer-term process which involves a shift in the way that the individual comes to see themselves, and is seen by others, as someone who does not offend. The notion of identity is central to this process and the role of youth justice practice, particularly with children who may be more entrenched in their offending, might accordingly be characterised as providing personal, and structural, support to children to develop an alternative personal narrative that constructs the future in positive terms (Hazel et al, 2017).

Since agency is at the heart of desistance, participative approaches to supervision planning are essential because knowledge of how children understand their current circumstances and where they see their future can only come from them. In this sense, desistance informed practice is imbued with an *'egalitarian sense of whose knowledge is recognised and counted'* (Graham and McNeill, 2020: 111). This in turn implies that successful outcomes pivot around high quality relationships between children subject to youth justice intervention and practitioners (Weaver, 2013).

But desistance is also dynamic and interactive, wherein the individual child's development is embedded *'in communities and profoundly affected by social structures'* (Graham and McNeill, 2020: 106). In this context, structural support to expand children's social capital and help them overcome some of the inevitable impediments to achieving their goals is critical to effective provision (Hazel et al, 2017). Such a model also implies that practice should entail an explicit recognition that children in trouble may have done wrong but are also likely themselves to have been victims of extensive injustice, in various guises, at both a personal and social level (McNeill, 2009).

Criticisms of the risk paradigm, and the growing evidence in relation to desistance, have had a discernible influence on recent youth justice policy. *AssetPlus*, for example, developed by the Youth Justice Board to replace *Asset*, is designed to ensure that risk, while still considered *'an important component of assessments, [is] to be balanced alongside consideration of a young person's needs, goals and strengths'* (Baker, 2014: 5). Insights from the desistance literature have been *'incorporated into the framework'* (Baker, 2014: 7). While remnants of the risk paradigm are still evident within the revised framework (Haines and Case, 2015), and there is an insufficient focus on relationships (Hampson, 2018), one welcome development is that the child's own understanding of their situation features as one of four equally weighted sources of information, potentially promoting the evolution of more participatory approaches to youth justice intervention (Janes, 2018). Further encouragement in this regard came in the form of a 'Participation strategy', published by the Board in November 2016 which made explicit reference to the right in Article 12 of the UN Convention on the Rights of the Child that children's views should be taken into account in relation to all matters that affect them. It committed the Board to:

- *'embedding young people's participation in how we support, advise and monitor the youth justice system*
- *helping government and our strategic partners when they make decisions - to take more notice of young people's voices*
- *giving young people a say in how we plan, deliver and evaluate our own activities'* (Youth Justice Board, 2016).

The strategy represented a considerable advance given that a previous study, conducted in 2009, found that expectations within youth justice practice were that children should be engaged in attending sessions rather than enabled to have a genuine say in planning their intervention. The authors of that report noted a number of obstacles to embedding participation in the youth justice process, including an ambivalence as to whether children who offend *'deserve'* to have their voices heard, and an ambiguity between the enabling and enforcement role of youth justice practitioners (Hart and Thompson, 2009). The more recent commitment by the Board to a *child first* ethos might be seen as further endorsement of a model of practice predicated on listening to children.

In an additional indication of the mood swing in dominant discourse, desistance has emerged as one of the core elements running through HM Inspectorate of Probation's (2018) *Standards for inspecting youth offending services*: assessments, planning, interventions and reviews are each required to demonstrate evidence that they support the child's desistance.

The NAYJ recognises that the incorporation of elements of desistance theory into youth justice policy constitutes substantial progress when measured against the erstwhile wholesale reliance on representing children in conflict with the law as embodiments of risk. This welcome should however be tempered in a number of respects.

As indicated above, desistance has not totally supplanted the risk paradigm but sits alongside it, albeit that the latter no longer functions as the primary explanatory framework. The scaled approach, for example, remained in place after the introduction of *AssetPlus*, and was only abandoned with the most recent version of National Standards in 2019. (Indeed, it continued to appear in the draft version of those standards.) Standards for inspecting youth offending services continue to require practitioners to *'identify and analyse offending related factors'* and to develop plans and interventions that address those factors (HM Inspectorate of Probation, 2018). From a practice perspective, there is, as noted earlier in the report, evidence that the introduction of *AssetPlus* has yet to deliver desistance-focused assessments and intervention plans, with at least some practitioners continuing to rely on risk-based constructions of youth crime and of the children who engage in it, whatever the ambitions of the architects of the new framework (Hampson, 2018).

In any event, despite the obvious merits of desistance theory over a risk-orientated philosophy, it is clear that it falls short, in important ways, of the expectations of a *child first* ethos, at least in its most common formulations. Desistance, by definition, is concerned with the cessation of offending; it accordingly tends to reinforce perceptions that the reduction of recidivism should be the object of youth justice intervention rather than the long-term wellbeing and healthy development of children in conflict with the law. Refocusing on those broader outcomes, highlights the necessity for a genuinely *child first* model to engage with the promotion of social justice, advocate on behalf of dispossessed and marginalised children in trouble, and challenge structural disadvantage and inequality where it harms such children both within the youth justice system and outside it (Gray, 2020). Commitment to a *child first*



approach also raises questions as to where ultimate responsibility for youth justice policy should lie. The NAYJ considers that if children in conflict with the law are to be viewed as *children first*, responsibility for youth justice provision should reside with the government department(s) accountable for other services for vulnerable children rather than the Ministry of Justice.

### ● Age: now the years are rolling by me

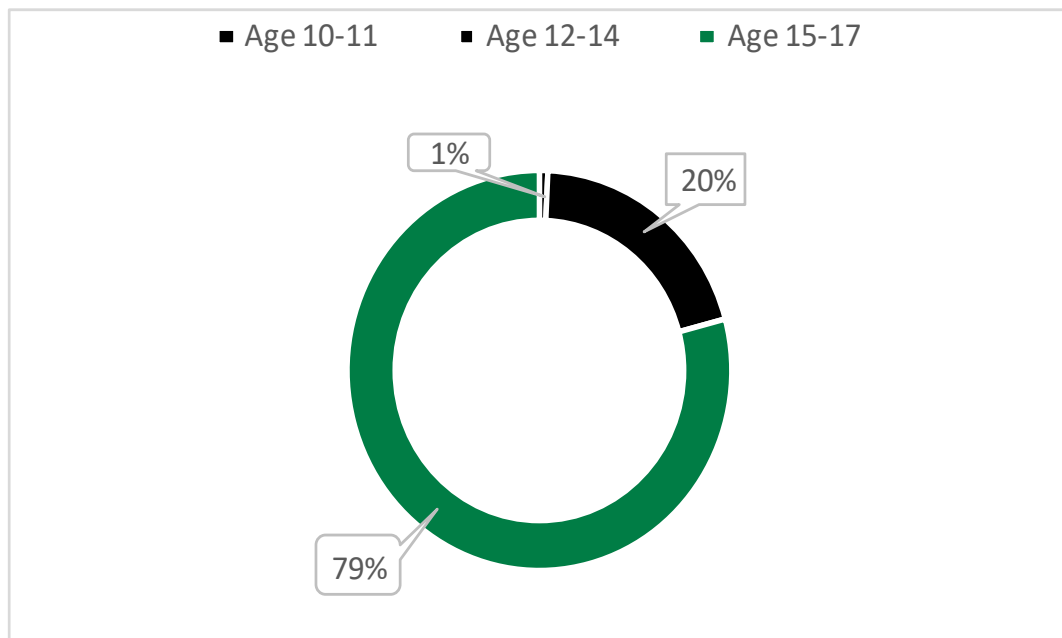
By definition, all children processed for offending fall within the 10-17 age bracket.<sup>20</sup> A number of factors combine to ensure that those who receive youth justice disposals are clustered towards the upper end of that range: older children are more likely to come to the attention of police more frequently by dint of the fact that they have more access to public space and may be subject to less adult supervision; the peak age of offending coincides with the late teenage years; and any discretion exercised by the police, and other agencies, to deal with illegal behaviour without resort to formal sanctions will tend to be exercised more readily where the suspect is a younger child.

During 2018, those aged 15-17 years accounted for almost 79% of all children receiving a caution or conviction for an indictable offence. Conversely, as shown in Figure 10, less than 1% were below the age of 12 years (Ministry of Justice, 2019b).

**Figure 10**

**Children receiving a substantive youth justice disposal by age (indictable offences) – 2018**

Derived from Ministry of Justice, 2019b



Generally speaking, this clustering around the higher age range is the sort of pattern that might be anticipated for the reasons outlined above. However, the distribution is not static but subject to fluctuation in line with the vicissitudes of policy and practice that determine the

<sup>20</sup> While it seems appropriate that the youth justice system deals with children, defined in the UN Convention on the Rights of the Child as persons below the age of 18 years, the abrupt cut off causes an array of difficulties for children who turn 18 during the course of proceedings. For an overview of the issues, see Youth Justice Legal Centre, 2020



circumstances under which children are criminalised. While the FTE target led to reductions in the number of children formally sanctioned across each age band, it has tended to filter out younger children from the system at a faster rate than their older counterparts. There has accordingly been a considerable reduction in the proportion of children aged 10-11 years receiving a youth justice disposal over the period since the target was introduced: in 2008, children aged 10-11 years accounted for 2.9% of all youth justice disposals; the equivalent figure for 2018 was 0.7%. There has been a corresponding rise over the same period in those aged 15-17 years as a proportion of all children receiving a formal sanction, from 69% to 79% (Ministry of Justice, 2019b).

Despite the welcome reduction in the number of children who enter the system, and particularly of those below the age of 12 years, the potential for any child to be criminalised remains subject to the minimum age of criminal responsibility. At ten years, the age of criminal responsibility in England and Wales is lower than in any other European country with the exceptions of Malta, Switzerland and Northern Ireland (Child Rights International Network, undated). This state of affairs has been subject to extensive criticism on the grounds that:

- the attribution of criminal responsibility at that age is incompatible with what is known about child development and maturation;
- it is inconsistent with other legislation that governs children's rights, safeguards and responsibilities (children in England and Wales cannot, for instance, consent to sex until the age of 16 years and cannot purchase alcohol or tobacco until they are 18);
- criminalising children at an early age increases the prospect of re-offending; and
- it is irreconcilable with international standards (Goldson, 2013; Bunn and Brown, 2018).

Confirmation of the latter point comes from the United Nations Committee on the Rights of the Child which has consistently censured the United Kingdom in this regard. In 2016, in its most recent assessment of the UK's compliance with the Convention on the Rights of the Child, the Committee noted that, while Scotland was in the process of raising the age of criminal liability, there had been no progress in the other two jurisdictions. As it had done on three previous occasions, the Committee recommended that the age of criminal responsibility should be increased '*in accordance with acceptable international standards*' (UN Committee on the Rights of the Child, 2016: 22). In the interim period, the Committee has revised its guidance on '*children's rights in the child justice system*' and has, in the process, increased, from 12 to 14 years, the lowest minimum age of criminal responsibility which it considers consistent with the provisions of the Convention.

*'States parties are encouraged to take note of recent scientific findings, and to increase their minimum age accordingly, to at least 14 years of age. Moreover, the developmental and neuroscience evidence indicates that adolescent brains continue to mature even beyond the teenage years, affecting certain kinds of decision-making. Therefore, the Committee commends States parties that have a higher minimum age, for instance 15 or 16 years of age* (Committee on the Rights of the Child, 2019: 6).

As a consequence, the low minimum age of criminal responsibility in England and Wales is currently even less acceptable, from a child right's perspective, than when it was condemned in 2016.

The relatively small number of children in the lower age ranges who are currently formally processed by the justice system makes reform in this regard appear timely. The large majority of children subject to such processes are over the age of 14 years and it would therefore require relatively modest changes in practice to raise the minimum age of criminal responsibility to accord with the prescriptions of the UN Committee. On the other hand, given previous history, it is not inconceivable that shifts in policy and practice might rapidly lead to a reversal of recent trends and a recurrence of the criminalisation of large numbers of young children. In that context, consolidating the gains of recent years through legislative measures, as early as possible, also appears increasingly sensible.

It is sometimes objected that raising the age of criminal responsibility would leave the state powerless to deal with children whose behaviour is problematic, rendering the public vulnerable to increased victimisation. In reality, such concerns are misplaced. The fall in the youth justice throughput of children, over the past 12 years, without any discernible rise in youth crime, suggests that many children have been successfully decriminalised with no adverse consequences. As discussed in the previous chapter, theft continues to be the most common offence leading to formal youth justice sanction and a considerable proportion of other matters that incur criminal justice disposals are relatively minor. There is abundant evidence that contact with the youth justice system is itself criminogenic so that the current low age of criminal responsibility might legitimately be considered as increasing the risk to the public. Many of the children who currently receive services through the youth justice system are in need of support, but this is more appropriately channelled through mainstream services for children. While there may have been a certain loss of expertise in working with challenging teenagers among practitioners within those services, as a consequence of a tendency to renounce responsibility for such children once they enter the criminal justice system, removing the option of criminalisation would quickly leading to a reskilling of staff as working with that cohort became a core function. Finally, children's services have ample powers, within existing legislation, to deal with the small numbers of children (though childcare or mental health legislation) who pose a serious risk to others. For instance, the two children who killed James Bulger were accommodated in secure children's homes until they were aged 18 years. As the NAYJ has previously pointed out, that same option would have been available to the authorities without the need for a Crown court trial, the associated extensive delays before treatment was provided, and the complications associated with providing them with new identities on release, had legislative provisions precluded prosecution because of a higher age of criminal responsibility (Bateman, 2012b).

The NAYJ considers that the age of criminal responsibility should be raised to 16 years in line with the age of consent (Bateman, 2012b). However, as noted earlier in the report, while happy to endorse, at least in principle, *child first* sentiments, successive governments have shown little appetite for reforming the age at which children become criminally liable, casting doubt over the extent to which there is a political will to follow through on the logic of such sentiments.

## ● Gender: it's a boy's world

If, as suggested earlier, the age-crime curve is one of the few certainties in criminology, a second enduring truth is that offending is predominantly a male activity, with the consequence that the needs of girls in trouble are frequently '*overlooked*' (Goodfellow, 2019). As Smith and McAra (2004) observed in 2004, girls are consistently less likely than boys to come into contact with youth justice agencies; they commit fewer and less serious offences, and grow out of crime more successfully and at a younger age. These findings continue to hold true some fourteen years later. In 2018, 1,832 girls received a substantive youth justice disposal for an

indictable offence, representing just over 11% of the total; and 37% of girls' offending that led to a formal disposal involved theft, compared an equivalent figure of 26% for boys (Ministry of Justice, 2019b). The under 18 female proven reoffending rate within 12 months of disposal in 2018 was 27.4% compared to a male rate of 40.5%. Moreover, those girls who do reoffend committed slightly fewer further offences within that year than their male counterparts: 4.02 against 4.05 (Ministry of Justice / Youth Justice Board, 2020a: supplementary table 9.2).

In the first decade of the century, there was a common perception, frequently inflamed by sensational media reporting, that girls' offending and anti-social behaviour was a bigger problem than it had been in the past (Sharpe, 2012), leading to newspaper headlines proclaiming the '*rise of the violent ladette*' (Evening Standard, 2012) or bemoaning the onset of '*an unprecedented crime wave among teenage girls*' (cited in Sharpe, 2012: 1). Nor can anxieties of this nature be dismissed solely as the preserve of tabloid hyperbole. Liz Calderdale, then Chief Inspector of Probation, for instance, was cited as explaining the rise in girls' violence as a consequence of the '*low cost of alcohol and the ease with which it can be bought*' (Evening Standard, 2012).

Such concerns are hard to square with the statistical evidence. Viewed over the longer term, there has been a remarkable decline in the number of females entering the youth justice system. Girls' detected indictable offending fell by an astonishing 95% between 1992 and 2018 (Nacro, 2008 and Ministry of Justice, 2019b). Nonetheless, the headlines were not totally without foundation, although they involved a misreading of what the data actually showed.

Between 2003 and 2007, as noted above, there was a short-term but pronounced escalation in the number of children entering the formal reaches of the youth justice system. Significantly, as detailed in Figure 11 (which shows changes in girls' and boys' offending from a 2003 baseline), this increase was considerably sharper for girls than that for boys, at 35% compared to 20%. The combination of the extent of the rise and the different pattern exhibited by males and females, no doubt, helped to garner the negative attention, outlined above, which suggested that girls' delinquency was spiralling upwards. It is important to be clear that there is little independent evidence for any abrupt growth in offending, or other forms of problematic behaviour, on the part of girls during this period. The previously cited study, conducted for the Youth Justice Board, found that self-reported offending fell between 2000 and 2009 by both girls and boys (Anderton et al, 2010). The proportion of girls indicating that they had been involved in two or more physical fights in the last two years fell, between 2002 and 2010, from 14% to 9% (Brooks et al, 2020). There was also a decline in the level of girls' reporting that they had drunk alcohol in the past week, from 23% in 2002 to 17% in 2008 (NHS Digital, 2019). The moral panic about the emergence of 'ladette' culture was accordingly fed almost exclusively by the statistics for detected girls' offending. Some account of the dynamics associated with that short period, and how they impacted differentially according to gender, is thus required.

The overall spike in detected youth crime between 2003 and 2007 was explained earlier in the report as an artefact of changed practice by the police and other youth justice agencies in response to the sanction detection target. The underlying gendered differences, shown in Figure 11, can be understood as a function of the fact that the performance indicator had a greater net-widening effect on girls. This, in turn, is readily explicable as a consequence of the more limited, less serious, nature of girls' offending (in combination with the persistence of paternalistic attitudes) which, prior to the introduction of the target, had supported a higher use of police discretion in relation to female behaviour, and an associated greater level of

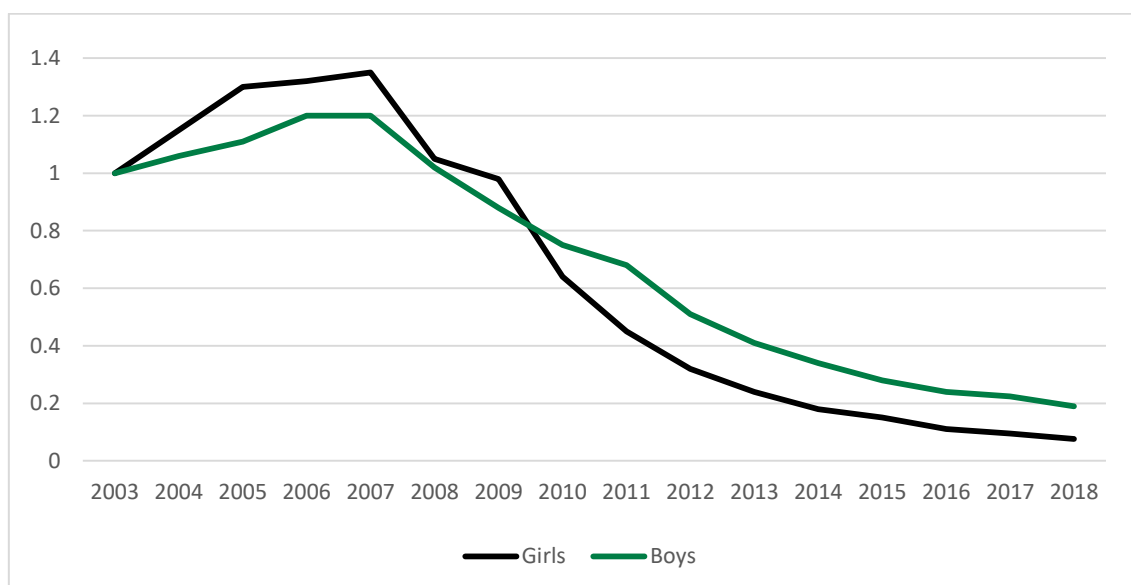
informal responses to girls' criminal behaviour that were not captured in the official data. The scope for increasing the use of formal sanctions, in order to meet the target, was accordingly more extensive in the case of girls (Nacro, 2008).

As observed earlier, the introduction of the FTE target initiated a sharp reversal, triggering a rapid decline in detected offending by all children which, within two years, more than compensated for the rise over the previous four. However, as shown in Figure 11, the general fall masked a faster reduction for girls. The logic of the new performance measure encouraged higher levels of diversion of young females since their offending is less serious and less prolific and they were accordingly more likely to undermine the FTE target if their offending resulted in a formal sanction. From around 2012 onwards, the trends for boys and girls have tended towards a more similar pattern, as might be anticipated once diversionary practice had become more established. Perhaps unsurprisingly, this dramatic decline, although it has persisted for a far longer duration than the short-term rise that preceded it, has garnered considerably less press, or policy, attention (Sharpe, 2012.)

**Figure 11**

**Changes in detected indictable offending to 2018 relative to a 2003 baseline by gender**  
(1.5 represents a rise of 50%; 0.5 a fall of 50%)

Derived from Bateman, 2017 and Ministry of Justice, 2019b

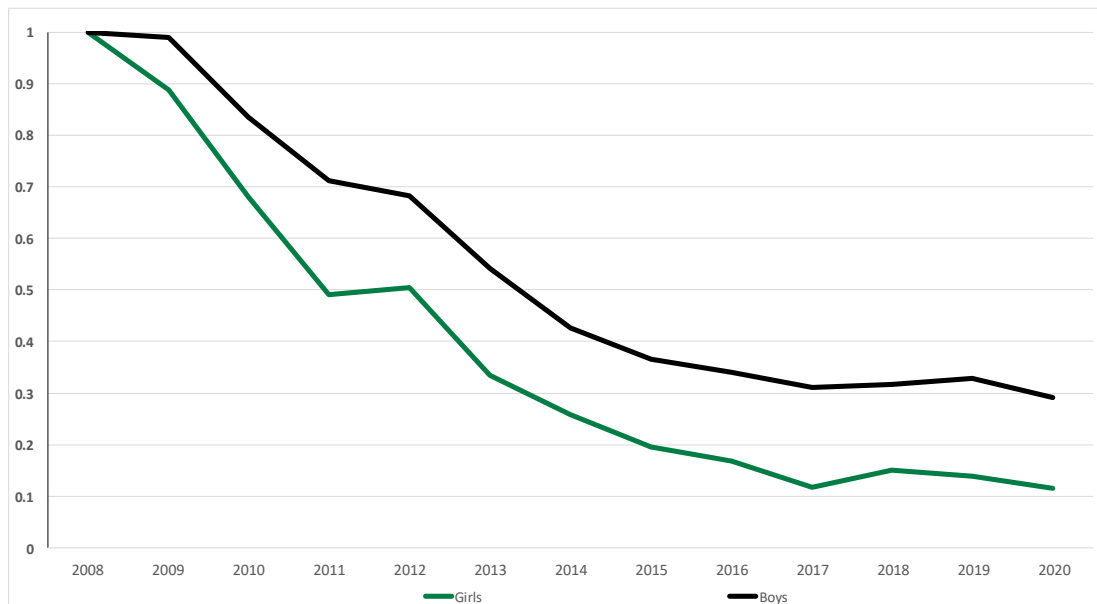


The history of child incarceration also demonstrates that the treatment of girls is particularly sensitive to shifts in policy and practice. Between 1992 and 2001, for instance, youth custodial sentencing rose by more than 90% (despite youth recorded crime falling) but the impact on girls of this punitive dynamic was considerably more alarming, with an increase in sentences of imprisonment imposed on females – albeit from a low baseline – of 500% (Nacro, 2003a). Conversely, with the onset of decarceration, from 2008 onwards, the fall in the number of girls detained in the secure estate has, as shown in Figure 12, dropped much more sharply than the number of boys, although the rate of decline for both groups has become more closely aligned from around 2017.

**Figure 12**

**Changes in the population of the secure estate relative to a 2008 baseline by gender: March each year (0.5 represents a fall of 50%)**

Derived from Ministry of Justice, 2020a and Youth Custody Service, 2020



These two examples of gender-specific outcomes arising from gender-neutral policy changes, are particular instances of a more general phenomenon. Differences in behaviour, emanating largely from social expectations in relation to gender roles are then mediated, and frequently amplified, by responses that also reflect assumptions about femininity and seek to regulate girls' conduct according to those expectations. Whereas boys' offending is understood simply as '*bad behaviour*', frequently associated with explanatory narratives of rites of passage associated with '*immaturity or rebellion*', girls' delinquency is more often constructed as pathological, stemming from '*defective or immoral character*' (Sharpe and Gelsthorpe, 2015). Such differentials, it is sometimes argued, makes it more likely that girls' transgressions will attract a welfare-orientated rather than a criminal justice response which has, historically, provided pathways through the social care system, into secure accommodation, rather than into custody via the youth justice system (Gelsthorpe, 1989). At the same time, those girls who are subject to criminalisation might be subject to harsher punishment for being '*doubly deviant*' where their behaviour is seen as contravening both criminal laws and expectations of femininity (Lightowlers, 2019: 693).

Some commentators have identified a shift in the treatment of girls in the period following the onset of the punitive turn in the early part of the 1990s, consisting of a partial abandonment of the earlier welfarisation of girls' problematic behaviour and its replacement by '*straightforward criminalisation*' (Worrall, 2001: 86) that led to the disproportionate rise in girls' imprisonment noted above. The logical culmination of this process was the spike in girls' detected offending shown in Figure 11. From 1992 to 2002, girls consistently accounted for just over one in five detected indictable youth offences (Nacro, 2008), rising to one in four by 2008 (Ministry of Justice, 2019b). In the more recent period, the growth of diversionary impulses have, as noted above, led to greater reductions in criminalisation and incarceration for girls. By 2019, for instance, the proportion of detected indictable youth crime attributable

to girls had fallen to 11% (Ministry of Justice, 2019b), signalling perhaps a reversion to earlier narratives of girls as in need to care and protection.

Some evidence for this reconstruction can be derived from the data on placements in secure children's homes (SCHs) which accommodate children sentenced or remanded to custody as well as those deprived of their liberty through welfare proceedings. Between 2008 and 2019, the number of children accommodated in SCHs fell from 280 to 172, a decline of 39%.<sup>21</sup> The decrease is associated entirely with a reduced use of secure accommodation for children in custody, as the youth justice sector has commissioned fewer places in secure children's homes; indeed the number of children placed on welfare grounds actually rose from 60 to 87 over the same period, an increase of 45%. The figures therefore denote a considerable change in function of these establishments. It is clear that girls do not account for all of the shift, but there has been a corresponding increase in the proportion of the total population of SCHs who are female from 24% to 39% over that timeframe, consistent with a reallocation from the criminal justice to the welfare system (Department for Education, 2010; 2019b: main tables).<sup>22</sup>

In any event, it is clear that girls in conflict with the law are significantly more vulnerable, on a range of indicators, than their male counterparts (Bateman and Hazel, 2014). While the backgrounds of nearly all children enmeshed within the criminal justice system are replete with prior histories of poverty and disadvantage, girls are particularly like to have experienced relationship difficulties, to have been let down by adults and to have suffered physical and sexual victimisation. As Sharpe and Gelsthorpe (2015: 53) have put it:

*'their lives are characterised and constrained by poverty, victimisation, family disruption and violence, educational exclusion, state 'care' and (often related) substance misuse and mental ill health'.*

Such experiences inevitably shape the nature of their offending with assaults typically committed in the context of peer or familial relationships (Bachelor, 2005).

The heightened vulnerability of girls relative to their male counterparts is particularly stark for those subject to imprisonment: as Table 7 demonstrates, girls admitted to custody are more than twice as likely as boys to be considered at risk of suicide or self-harm and are more likely have identified concerns in relation to physical and mental ill health (Ministry of Justice /Youth Justice Board, 2017b).

**Table 7**

**Assessed characteristics of children admitted to custody by gender:**

**April 2014 - March 2016 (selected indicators of concern)**

Derived from Ministry of Justice/Youth Justice Board, 2017b

Indicator of concern	Percentage of admissions	
	Boys	Girls
Suicide or self-harm concerns	30%	63%
Physical health concerns	29%	39%
Substance misuse concerns	45%	50%
Mental health concerns	33%	41%
Sexual exploitation concerns	6%	60%

<sup>21</sup> Figures are for 31 March each year

<sup>22</sup> The published data do not disaggregate by gender and nature of placement



These assessments are reinforced by data indicating that, during 2019, girls in custody were more than six times more likely than boys to self-harm (Ministry of Justice/Youth Justice Board, 2020a: supplementary table 8:11). In same year, girls in secure training centres were also more likely to report a history of state care than boys - 62% against 51% (Taflan and Jalil, 2020). Such vulnerabilities are clearly not met with adequate levels of support: across the secure estate girls were more than twice as likely to be physically restrained (Ministry of Justice/ Youth Justice Board, 2020a: supplementary table 8:5); those in STCs (comparable data are not available for SCHs) were much more likely to indicate that they had felt unsafe in the establishment (50% against 21%) (Taflan and Jalil, 2020). Girls in custody are also placed considerably further from home – those incarcerated between 2014 and 2016 were held an average of 72 miles away from their home community compared with an equivalent figure of 49 miles for all children (Goodfellow, 2019).

Nor should it be assumed that girls subject to imprisonment have committed the most serious offences. Comprehensive analysis by Goodfellow (2019: 33) demonstrates that more than one third of custodial sentences imposed on girls between 2014 and 2016 were for non-violent offences including *'theft, drug related offences, public order and breach of a statutory order'*. Moreover, violent offences leading to custody were not always towards the upper end of seriousness. As shown in Table 8, offences of common assault and assault occasioning actual bodily harm accounted for almost half of sentences of imprisonment imposed on girls, 29% and 17% respectively. Assaults on police accounted for a further 11%. Such data tend to undermine the standard narrative that girls are, in the main, only incarcerated when they commit grave crimes and cast doubt on the assumption that the imprisonment of girls occurs as a last resort. They also lend credence to the contention that girls may receive harsher treatment where their behaviour transcends gender norms, in this case through exhibiting violent behaviour.

Given the rapid decline in girls' imprisonment, and the extreme vulnerability of those detained, Goodfellow (2019) has questioned why the majority of females in the children's secure estate continue to be placed in STCs rather than SCHs. Of girls remanded or sentenced to custody between 2014 and 2016, 60% were placed in the former type of establishment, although analysis demonstrated that a considerable proportion of these were assessed as having concerns at a level which would render them sufficiently vulnerable to be placed in an SCH. Goodfellow (2019) concludes that the reduction in the imprisonment of girls should have provided an opportunity to ensure that all of those who remain in detention are accommodated in secure children's home which are specifically designed to cater for vulnerable children. As she puts it:

*'There is no clear justification for the arbitrary separation of a very small number of girls into penal institutions that fail to meet their needs and keep them safe.... [T]his is a timely opportunity to transfer all girls out of penal detention into more appropriate and safe environments (Goodfellow, 2019: 46).*



**Table 8**

**Violence against the person offences leading to the imposition of a custodial sentence on girls, by offence type: 2014-2016** Derived from Goodfellow, 2019

Offence type	Percentage of all violent offences leading to custody
Common assault	29%
Assault occasioning actual bodily harm	17%
Wounding with intent to commit grievous bodily harm	17%
Assaulting a constable	11%
Having bladed/ pointed article in public place	6%
Wounding/ inflicting grievous bodily harm	4%
Assaulting person in the execution of their duty	2%
Having offensive weapon in public	2%
Manslaughter	2%
Murder	2%
Threats to witness / juror	2%
Attempt to cause grievous bodily harm with intent	2%
Possess firearm with intent to cause fear of violence	<1%
Possess firearm with intent to endanger life	<1%
Resisting / obstructing a constable	<1%
Using a noxious substance	<1%
Not known / data missing	<1%

The nature of placements is indicative of a more general problem. The extent of need among the female offending population, in combination with the fact that girls are less likely than boys to reoffend, can prove problematic where gender-neutral assumptions determine practice: youth justice assessments predicated on risk factors will systematically over-predict the likelihood of recidivism in girls, potentially resulting in higher levels of intervention than would otherwise be warranted by their law breaking (Bateman, 2011). Moreover, the limited research in this field suggests that at least some of the vulnerabilities displayed by girls in trouble have developed as a consequence of a history of '*welfare inaction*' (Myers, 2013: 218) and '*their abandonment by helping professionals*', further highlighting the inequity of overzealous intervention once youth justice processes are initiated (Sharpe and Gelsthorpe, 2015: 58).

Injustices of this nature have led to an increasing recognition of the inadequacies of gender-neutral youth justice policies and practice (Goodfellow, 2019). Sharpe has, however, cautioned that an insistence on gender specific programming as an alternative strategy is unlikely to combat the institutional adversity experienced by, and lack of welfare support offered to, girls from the most disadvantaged and victimised backgrounds and runs the risk of, unintentionally, rendering girls personally responsible for that victimisation. She argues instead for a fundamental transformation of 'social welfare and education policy and practice with those young women (and indeed young men) who have been failed by the *state*' (Sharpe, 2016: 13).

## ● Race and criminalisation

The Black Lives Matter global protests that exploded in the wake of the killing of African American, George Floyd, by a white police officer in Minneapolis on 25 May 2020, are a timely reminder, if one were needed, that criminal justice systems are disproportionately populated by people from ethnic minority backgrounds. Within England and Wales, a recognition of the over-representation of Black, Asian and minority ethnic (BAME) people led to the requirement, introduced in 1991, that the government publish information to assist criminal justice agencies in meeting their duty to avoid discrimination on the grounds of race. More recently, in January 2016, the government asked David Lammy, MP for Tottenham, to lead an independent review to investigate the treatment of, and outcomes for, BAME individuals within the criminal justice system. The final report, published in September 2017, noted that while many of the causes of racial disparity are to be found outside the criminal justice system, much more could be done to ensure equality of treatment within it (Lammy, 2017). For current purposes, it is significant that Lammy's '*biggest concern*' lay with the youth justice system, although recommendations specific to youth justice were relatively slim (Lammy, 2017: 4).

As one might anticipate from that observation, BAME children, viewed as a single group, are over-represented in the youth justice system: while 18% of the 10-17 population come from a minority ethnic background 27% of children cautioned or convicted in 2019 were of BAME origin. Moreover, this latter figure represents a rise from 14% in 2010 (Ministry of Justice / Youth Justice Board, 2020a: supplementary table 3.1). It is important to register, however, that the picture varies by ethnic background. As shown in Table 9, relative to the composition of the wider 10-17 population, Asian children have been consistently *under*-represented among those receiving a substantive youth justice disposal. By contrast 2.8 times as many Black children come to the attention of the youth justice system as would be expected given the composition of the general population within the relevant age range; moreover the extent of over-representation for this group has risen substantially since 2010. The representation of mixed heritage children in the youth justice population was consistent with the composition of the general community in 2010, but in the intervening years has doubled.

**Table 9**  
**Representation by ethnicity of children in the 10-17 population (2011 mid-year estimate) and in the youth justice system: 2010 to 2019**

Derived from Ministry of Justice/Youth Justice Board, 2020a: supplementary table 3.1

	White	Asian	Black	Mixed heritage	Other
<b>10 - 17 population</b>	81%	9%	4%	4%	1%
<b>Children cautioned or convicted</b>					
2010	86%	4%	6%	4%	0%
2011	84%	4%	7%	4%	1%
2012	82%	5%	8%	5%	1%
2013	83%	5%	8%	3%	1%
2014	80%	5%	9%	5%	1%
2015	80%	5%	9%	5%	1%
2016	78%	5%	10%	6%	1%
2017	75%	5%	11%	7%	2%
2018	73%	5%	12%	8%	2%
2019	73%	5%	11%	8%	2%

Lammy's suggestion that racial inequality outside of the criminal justice system is reflected within it, is no doubt relevant to explaining the pattern shown in Table 9 since the concentration of poverty, disadvantage and disempowerment experienced by BAME communities will be mirrored in increased contact for minority ethnic children with the youth justice system. Indeed, a Home Affairs Committee (2007) inquiry into young Black people and the criminal justice system concluded that the primary cause of disproportionality was social exclusion. The evidence for disproportionate levels of social exclusion among BAME children is overwhelming. For example:

- One in five Black people and one in seven Asian people live in the 10% most deprived neighbourhoods
- 22% of Black children and 18% of children of mixed heritage are entitled to free school meals compared with 12% of white children
- Black people are twice as likely as white people to be hospitalised as a result of mental ill health but BAME children are less likely to engage with preventive mental health services
- BAME children are at considerably higher risk of being a victim of person crime, and as noted earlier in the report, there is a strong correlation between victimisation and offending (Youth Justice Board, 2019d).

Black children are also twice as likely, and mixed heritage children 50% more likely, to be excluded from school than their white counterparts. Asian children by contrast are excluded at half the rate of white children (Youth Justice Board, 2019d). The link between exclusion and offending is, of course, well established (Berridge et al, 2001). In 2017/18, 89% of boys in YOIs reported that they had been excluded from school (Green, 2019). Similarly, almost one in four children in local authority care are from a BAME background, with the most significant disproportionality shown by Black and mixed heritage children; Asian children are under-represented among those looked-after by the local authority. Given the correlation between care, offending and criminalisation, highlighted earlier in the report, such figures again help to shed light on the ethnic composition of the youth justice population (Day et al, 2020). Nor are these factors independent; they interconnect in various ways that have the potential to reinforce each other. To take one example, in 2018, looked-after children were five times more likely than the general population to have been subject to at least one fixed-term exclusion (Department for Education, 2020).

Such wider inequalities provide an important context for explaining disproportionality in the youth justice system, helping to account, for instance, for the fact that almost one in three children arrested for a notifiable offence in 2019 was of BAME origin. Analysis by the Ministry of Justice has, moreover, confirmed the importance of this gateway to the system, noting that it *'influences the raw number of defendants proceeding through the courts system and ultimately into prison if convicted and sentenced'* even if no disproportionality occurred at other decision-making points (Uhrig, 2016:12). Wider inequalities do not however tell the whole story.

In 2019, Black people were subject to stop and search at almost ten times the rate for the white population (Home Office, 2019c: Stop and search statistics data table SS13). Figures are not disaggregated by age but, since young people tend to spend more time than adults on the street, it would not be unreasonable to assume that a similar disproportion would be found in

relation to the exercise of the power on children (All Party Parliamentary Group on Children, 2014), resulting in a higher level of arrest of BAME children irrespective of the underlying prevalence of offending. Differential police practice in this regard further undermines the trust that BAME children have in authority, reinforcing perceptions that criminal justice agencies discriminate against them (Sharpe, 2005). Such sentiments go some way to explain the fact that minority ethnic children are less likely to make admissions in police interviews, meaning that they are not eligible for formal pre-court disposals (Bevan, 2019) and may be deemed unsuitable for informal diversionary interventions involving restorative justice, since accepting responsibility for the harm caused is generally regarded as a pre-requisite of such options (Sabbagh, 2017).

It is clear, too, that enduring socio-economic inequalities cannot account for the scale of increased disproportionality over the last decade shown in Table 9. In large part this increase is a function of the fact that the fall in FTEs has been less pronounced for BAME children than for their white counterparts. Between 2008 and 2019, the number of white FTEs to the youth justice system declined by 91% but the equivalent decline for BAME children was 80%, suggesting that increased diversion has benefited the former group to a considerably greater extent. Of course, such disproportionate outcomes are equally in need of explanation as those highlighted in Table 9.

An issue of further concern is that overrepresentation increases in line with the intensity of youth justice intervention: BAME children who enter the system are, in other words, more likely to receive harsher levels of punishment. As shown in Table 10, in 2019, BAME children comprised 26% of children receiving a formal youth justice sanction but accounted for 35% of those convicted, indicating that they were less likely to be cautioned. More worryingly perhaps, 42% of children receiving a custodial sentence in 2019 were from a BAME background. These overall figures disguise the extent of disproportionality at each stage for Black children since the relative representation of Asian and mixed heritage children remains broadly stable across the tariff. When sentenced to imprisonment, BAME children are given longer sentences: the average term for Asian children is on average five months longer than that for white children (Ministry of Justice / Youth Justice Board, 2020a). In 2019, 48% of children given a longer-term custodial sentence in the Crown court for more than two years were from a BAME background (Ministry of Justice, 2020a).

**Table 10**

**Representation of children by ethnicity (where known) at different stages of the youth justice system: 2019**

Derived from Ministry of Justice / Youth Justice Board, 2020a: supplementary table 5.6c

	White	Asian	Black	Mixed heritage	Other
<b>Proven offences</b>	73%	5%	11%	8%	2%
<b>Court convictions</b> (indictable offences)	65%	6%	20%	7%	2%
<b>Custodial sentences</b>	58%	6%	28%	7%	1%
<b>Average length of custody (months)</b>	17.8	22.8	18.5	22.1	18.8

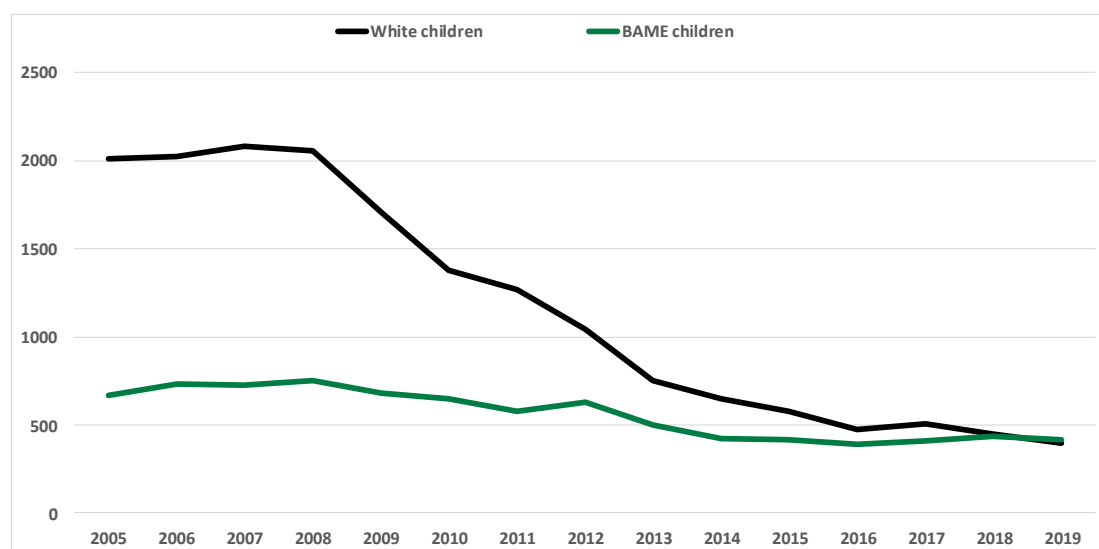
Once inside the system, assessments based on risk are likely to disadvantage BAME children in a similar fashion to that described for girls in the previous section of the report. Research conducted prior to the introduction of *AssetPlus* confirmed that Black and mixed heritage children within the youth justice system had significantly higher levels of need (as measured by scores in the different domains of *Asset*) than their white counterparts, reflecting in part the racial disparities outside of the youth justice system described above. Levels of assessed need in Asian children, conversely, were lower than for other groups (May et al, 2010). To the extent that such needs are interpreted as criminogenic risk factors – as intended within the *Asset* framework and dictated by the risk factor paradigm more generally – then Black and mixed heritage children will tend to be subject to more intensive, and intrusive, forms of intervention. They are accordingly responsibilised for prior experiences of discrimination and disadvantage.

The increasing levels of disproportionality across the youth justice system in recent years is reproduced in a rise in the proportion of BAME children sentenced to custody. As discussed in more detail later in the report, there has been a remarkable decline in the number of children incarcerated over the past decade but the fall has been significantly less marked for BAME children. This pattern is shown most clearly in data for the population of the children's secure estate which reflect the numbers of children who enter custody (both on remand and subject to sentence) as well as length of stay. As shown in Figure 13, while in May 2005 minority ethnic children accounted for one quarter of those in custody, by the same month in 2019, that proportion had risen to 51%. It was noted above that the fall in FTEs over recent years has been of comparatively less benefit to BAME children; the same is true to an even greater extent in relation to imprisonment. Between 2005 and 2019, the white population of the secure estate has declined by 80%; the equivalent reduction for BAME children was just 38%.

**Figure 13**

**Population of the secure estate by ethnicity: 2005 – 2019 (May of each year)**

Derived from Youth Custody Service, 2020



It is clear, from self-report surveys, that the scale of disproportionality shown in the various data presented above cannot be explained by differences in the prevalence or seriousness of offending (Webster, 2015). It is hard to avoid the conclusion that discrimination in various guises is responsible for at least some of the inequity revealed in the statistics (see for example, May, Gyateng and Hough, 2010).

Analysis conducted as part of the Lammy review, sheds light on the stages of the youth justice process that have the biggest impact on over-representation (Uhrig, 2016). As noted earlier, racial disproportionality at the point of arrest was one of the most significant determinants of what happens subsequently. Nonetheless, there was evidence of disproportionate outcomes, albeit not so marked, at other decision-making points. Black and mixed heritage boys were more likely to be charged than white males. Once cases proceeded to prosecution, the overrepresentation of BAME boys among those sent to Crown court – where long term sentences are available – was particularly stark: Black young males were almost 60% more likely than white boys to be committed to the Crown court; Asian boys were nearly 2.5 times more likely to be tried in that venue by comparison with white young males.

Black boys proceeded against in the youth court were less likely to be found guilty but, if convicted, were significantly more likely to be sentenced to custody. For every white boy imprisoned, 1.2 Black and 1.4 mixed ethnicity young males received a detention and training order. BAME children tried in the Crown court were significantly more likely to plead not guilty but rates of imprisonment were broadly comparable to those for white children. The disproportionality shown in data for long-term sentences of imprisonment, noted above, would thus appear to be largely a function of the decision as to where the case should be tried.

The above disparities, at each stage of the youth justice system, also have longer-term discriminatory implications in terms of the constraints on future prospects associated with criminal records. BAME children will as a consequences of disproportionately be more likely to accrue a criminal record that has to be declared for a longer period, or never becomes spent (Standing Committee for Youth Justice, 2017; Stacey, 2019).

The NAYJ considers that addressing the over-representation of children from minority ethnic backgrounds is one of the most pressing issues faced by the youth justice system, since the prevailing pattern seriously undermines the ability of that system to deliver just outcomes (NAYJ, 2019). The *Association* is also concerned that other groups – including Gypsy, Roma and Traveller communities, and unaccompanied asylum seekers - are over-represented among those who come to the attention of criminal justice agencies. The lack of consistent data however means that less attention is paid to such communities (The Traveller Movement, 2016). Nonetheless, the figures which are available provide further compelling evidence that the youth justice system is, in effect, a repository for the punishment of the most socially excluded and vulnerable children in society.

Disproportionality within the youth justice system is widespread, longstanding and deep rooted; the causes are complex and intertwined. In these circumstances, developing effective strategies to reduce it, is challenging. It is clear that substantial investment in provision for young people in disadvantaged communities, reversing years of under resourcing, is a pre-requisite of reducing inequity for BAME children. Relationships of trust might be improved by ensuring that staffing in the justice system is representative of the communities it serves, through the introduction of targets. Within the youth justice system itself, there are evidently some reforms that would facilitate increased decriminalisation of BAME children, such as removing an admission of guilt as a requirement of diversion (Lammy, 2017; Kushing, 2014).

Ultimately, however, where youth justice processes exacerbate over-representation, it is as a consequence of the amalgamation of individual decision-making. As David Lammy (2017) has argued, subjecting such decision-making to scrutiny may be key to improving outcomes since: *'First, it encourages individuals to check their own biases. Second, it helps identify and correct*

*them'* (Lammy, 2017: 69). Lammy also recommends the adoption of a principle that where no evidence-based explanation can be provided to account for racial disparities, reform should be introduced to address them. As indicated earlier in the report, the Youth Justice Board's (2020: 7) latest business plan includes a commitment to '*influence the youth justice system to treat children fairly and reduce over-representation*'. Honouring that commitment will involve the promotion of reform where explanation is lacking. Adopting a *child first* practice that focuses on the long-term wellbeing of all children in conflict with the law, rather than seeing them in terms of the risks they embody, will also enhance the prospects that youth justice interventions do not exacerbate racial inequalities.



## Chapter 6

# Pre-court formality and informality

The NAYJ considers that wherever possible children in trouble should be dealt with outside the parameters of the criminal justice system. There is compelling evidence that formal sanctioning – at least as currently configured - interferes with the natural processes of desistance through maturation, undermines the delivery of mainstream service provision, imposes punishment inappropriately on children who are overwhelmingly victims of social injustice, increases the prospect that the child will adopt a ‘delinquent’ identity, exacerbates the risk of further offending and thwarts future life chances (McAra and McVie, 2015; 2018).

As noted earlier in the report, this evidence was widely accepted during the 1980s by practitioners, academics and, significantly, policy makers. Guidance to the police in 1985, for instance, endorsed the merits of decriminalisation, counselling against a presumption that youth offending should require a formal response ‘*as against a decision to take less formal action or no further action at all*’ (Home Office, 1985). One consequence was that the decade became what was called shortly afterwards ‘*the most remarkable period in youth justice history*’, constituting a ‘*de-escalatory turn*’ (Rutherford, 1992: 11) that pre-figured, in a number of respects, contemporary trends identified earlier in this report: both periods were characterised by a rapid reduction in the number of children entering the formal reaches of the youth justice system and a corresponding decline in the use of child imprisonment. The gains associated with the 1980s were however subject to a rapid, and largely unanticipated, reversal following a ‘*punitive turn*’ described earlier in the report, and a corresponding shift towards early formal intervention, associated net-widening and an acceleration in the use of custody, that occurred from the early 1990s onwards (Muncie, 2008).

It should be noted that the present period is not simply a replay of what happened thirty years previously. First, the de-escalation of the 1980s, was, in the initial stages at least, largely driven by practitioners and supportive academics, whose main focus was a ‘*crusading zeal*’ directed to avoiding the use of imprisonment for children (Allen, 1991: 41). Diversion and minimum necessary intervention, while regarded as commendable ends in themselves, were equally valued in terms of the contribution they made to this primary goal of decarceration (Haines and Drakeford, 1998). There is little evidence of a powerful youth justice practitioner lobby at the present juncture, and, as argued earlier in the report, the primary impetus for reductions in criminalisation and incarceration appear to have been the introduction of centrally imposed targets, arguably a pragmatic response to the imperatives of austerity (Smith, 2020), even if diversion from prosecution and custody have been largely welcomed by the youth justice community.

Second, while some many of the more thoughtful campaigners of the 1980s argued that minimum intervention should be accompanied by a concern for the ‘*rights and potentials*’ of children within the youth justice system (Haines and Drakeford, 1998: 145) and accompanied by advocacy for the development of a broad range of support services for children outside it (Rutherford, 1992), the principal concern was a negative one – to keep children away from the baleful effects of intervention, or as Edwin Schur (1973: 155) famously put it, to ‘*leave the kids alone*’. The underlying philosophy thus suggested problems emanating from the toxic consequences of deprivation and social exclusion were the remit of mainstream services,

largely ignoring the fact that, by 1990, the United Kingdom had experienced fifteen years of cutbacks in welfare expenditure (Pierson, 1994). Minimal intervention in such circumstances could on occasion seem akin to a *'battle cry of benign neglect'* (Pitts cited in Nifed, 1985: 2) that failed to support children in the greatest need and made it much easier to argue for a more interventionist stance the moment that more punitive sentiments began to emerge.

If practice in the 1980s was accordingly centred on diversion *from* intervention, the current era retains a strong interventionist logic. Moreover, in the absence of detailed government guidance, or an active practitioner lobby, assumptions about the preferred nature of intervention and model of delivery show considerable diversity (Kelly and Armitage, 2015; Smith, 2020). In at least some areas, a risk-based approach continues to dominate so that children diverted from formal sanctions are nonetheless subject to *'offending behaviour'* work that differs little from that which would be delivered had diversion not occurred (Kelly and Armitage, 2015: 11). In other areas, youth offending teams are increasingly integrated with wider services for children, allowing interventions that aim to address a broader range of needs in a potentially non-stigmatising fashion (Smith, 2020). If the intervention imperative dominates for the most part, it has been abandoned in some areas. But rather than this reflecting an underlying sensitivity to the unintended consequences of youth justice intervention, it is frequently a pragmatic solution to ensuring that hard-pressed services direct resources towards working with the highest risk children (Smith, 2020). As outlined in due course, little is currently known as to the relative prevalence of these different approaches.

In this context, while the recent reduction in FTEs represents significant progress for the treatment of children in trouble, it also raises questions in relation to how that decline has been achieved and what has replaced net-widening. The experience of the 1980s provides testimony to the ease with which such progress can be rapidly undermined. Understanding the dynamics of the current contraction of the formal youth justice system might facilitate the development of safeguards to militate against any contemporary U-turn that could otherwise reverse recent advances. One such safeguard might include fostering a deeply embedded philosophical commitment across the sector, reflected in government policy and the administration of youth justice, to ensuring that the best interests, and longer-term wellbeing, of the child are at the heart of decision-making.

## ● Watching the detectives

It is widely acknowledged that childhood is one of the most regulated aspects of human activity (Rose, 1999) and policing constitutes a central element of that regulation. As noted above, the manner in which this function is performed is critical for the subsequent pathways of children in conflict with the law, since the police are effectively the gatekeepers who, albeit it sometimes in deliberation with other agencies, determine whether, and which, individuals enter the formal youth justice system or are diverted from it. The role of the police in the effective implementation of both the sanction detection and FTE targets has already been discussed, as has the powerful influence of police decision-making on over and under-representation of particular groups of children.

For many children, encounters with the police take the form of stop and search, a procedure which Authorised Professional Practice issued by the College of Policing (2017) acknowledges may be more traumatic for children and can have *'long-term effects on their perceptions of the police'*. Stop and search is also one of the four priority areas for the National Police Chiefs' Council (2015:10) who similarly recognise that an inappropriate use of the power can be *'harmful to children's trust in the police and ... can give rise to strong feelings and resentment'*.

Statistics on stop and search are not disaggregated by age but the All Party Parliamentary Group for Children (2014) concluded that more than one million children were subject to this procedure between 2009 and 2013. The figure is almost certainly a substantial under-estimate since it was based on returns from just 26 of 44 police forces. Nonetheless, the estimate is still considerably higher than the number of children (893,000) arrested over the same period. Conversely, the majority of arrests are not pursuant to a stop and search. As a consequence, it is clear that many children are searched inappropriately and unnecessarily. (Of even greater concern perhaps is data provided by 22 police services indicating that 1,136 of those searched were below the age of criminal responsibility (All Party Parliamentary Group for Children (2014).)

In recent years, considerable disquiet has been expressed about stop and search, in relation to its lack of effectiveness, the potential for discrimination and the impact on relations between the police and communities (see for instance, Equality and Human Rights Commission 2010; Keeling, 2017). In 2013, HM Inspectorate of Constabulary (2013: 48) found that, in more than a quarter of cases, there were insufficient grounds to justify a legal search, that many police forces were not complying with the requirements to monitor the searches they undertook, searches did not target priority offences but were often directed at low level drugs possession and that *'many people subjected to the power didn't feel fairly treated'*.

Such criticisms have led to a substantial decline in the use of the power. In 2001/02, 770,100 searches were conducted (on children and adults), the large majority under section 1 of the Police and Criminal Evidence Act 1984, which requires the police to have reasonable suspicion. By 2008/09, that figure had risen to 1,519,561 but subsequently began to fall rapidly to 383,629 in 2018/19. This latter figures does however represent a considerable increase, of 36%, over the previous year, the first rise in a decade (Home Office 2019c). This latter growth is likely to reflect something of a recent shift in mood. In May 2017, for instance, the Commissioner of Metropolitan police was reported in the *Observer* newspaper (2017) as favouring an increased use of stop and search to address the issue of knife crime. That shift was reinforced in April 2019, when the government announced an easing of the restrictions on police powers to use stop and search under section 60 of the Criminal Justice and Public Order Act which allows police to stop and search anyone in a designated area where serious violence is anticipated without any grounds for suspicion in respect of the individual searched. The relaxation reduces the level of authority required to approve the use of section 60 to that of level of inspector; it also lowers the threshold for such authorisation from a reasonable belief that serious violence *will* occur to a belief that it *may* occur (Home Office, 2019d). The impact of this slackening has yet to register in the published data but given that stop and search figures were already beginning to rise, some further growth might be anticipated.

As noted above, stop and search has considerable potential to influence the extent of disproportionality at later stages of the youth justice system, but it should also be acknowledged that the large reduction in the use of the power described in the previous paragraph has not prevented increasing over-representation of BAME children. Although a lack of disaggregated data precludes detailed analysis, this is likely to be explicable, at least in part, by the fact that the fall in stop and search has been less pronounced for BAME individuals, as shown in Table 11. In 2010/11, Black people were less than seven times more likely to be searched by the police, but by 2018/19, this had risen to almost ten times as likely.

**Table 11**

**Stop and searches per 1,000 population, by ethnicity, 2010/11 and 2018/19 (all ages)**

Derived from Home Office 2019c: Stop and search data table SS13

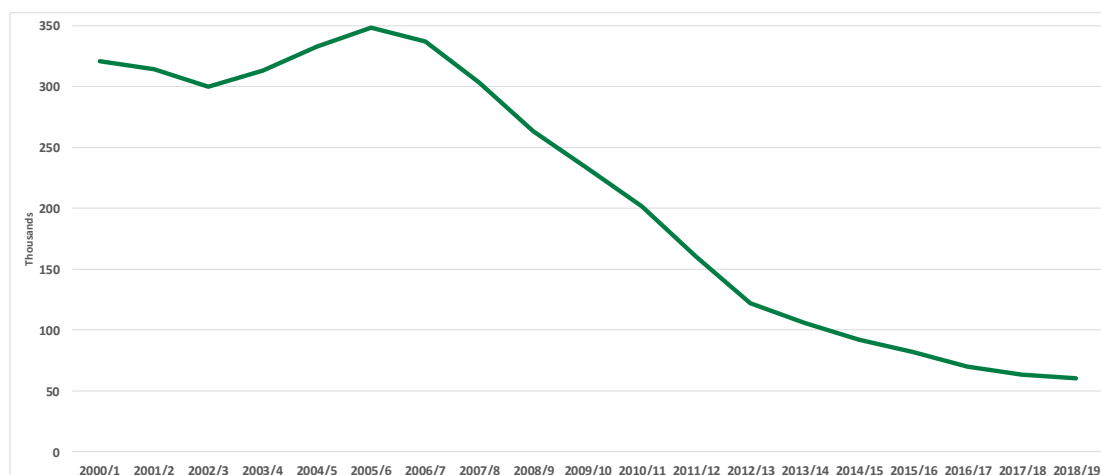
	White	Asian	Black	Mixed heritage	Other
2010/11	17	37	113	31	19
2018/19	4	11	38	11	7

Arrest data, unlike figures for stop and search, are disaggregated by age and it is apparent that part of the explanation for the fall in detected youth offending is that fewer children are arrested by the police than hitherto. As shown in Figure 14, the number of children arrested for a notifiable offence rose between 2002/03 and 2005/06 but began to fall sharply thereafter; from 336,675 in 2006/7 to 60,208 in 2018/2019, a reduction of 82%. The pattern is broadly similar to that for FTEs, though at a higher level.

**Figure 14**

**Children arrested for notifiable offences: 2000/01 to 2018/19**

Derived from Home Office 2019c and Ministry of Justice/Youth Justice Board, 2012



Suggesting that the decline in arrests explains the reduction in FTEs simply pushes the question back one stage since some account of arrest trends is then also required. A number of factors might be thought relevant here, inevitably echoing those that have impacted on trends in detected offending. First, the longer-term reduction in children's criminal activity identified earlier in the report is likely to have contributed to the fall in arrests, but it is doubtful that this could account for the extent of the decline from 2006/07 onwards. It is true that the Youth Justice Board did invest heavily in youth crime prevention in the form of highly targeted interventions such as Youth Inclusion Programmes (YIPs), established in 2000 to engage with the highest risk children in the most deprived and high crime neighbourhoods. To the extent that these were successful in diverting younger children away from later offending, such programmes could have contributed to the decline in child arrests. However, the evaluation of YIPs, while generally positive, was a little equivocal on the impact of the programme on reoffending. It found that more than half of participants with an arrest history were not arrested again in the follow up period; however, 70% of children participating had no previous

arrest history and, of these, almost half *were* arrested in the follow up period (Morgan Harris Burrows, 2008).

Moreover, the approach which YIPs embodied has been criticised for mirroring the risk factor paradigm that underpinned, for more than a decade, interventions with children subject to formal youth justice sanctions, thereby exposing individuals with no adjudicated offending history to processes associated with stigmatisation and focusing on personal deficits as the cause of youthful misbehaviour (Kelly, 2012). Whatever the merits of such criticisms, or the impact on individual participants, it is clear that from the data shown in Figure 14 that for the first six years of their existence, YIPs had no discernible deflationary impact on the total number of children arrested.

It is moreover hard to ignore the fact that the fall in arrests coincided with the ending of the sanction detection target and the establishment of the FTE indicator, suggesting that modifications to practice, to accommodate that policy change, had a significant impact on the treatment of children who came to police attention.

As noted earlier in the report, Youth restorative disposals (YRDs) were announced in 2007 by the *Children's Plan* and piloted in eight police force areas between 2008 and 2009. At inception, this new option was clearly designed to stem the flood of children into the youth justice system but equally was not inconsistent with an interventionist stance. Its purpose was to:

*'prevent re-offending through a more rehabilitative approach and the involvement of victims so offenders have to face up to the consequences of even low level offending'* (Department for Children, Schools and Families, 2007: 139).

Usually delivered by officers on the street shortly after the incident, they were designed to contain a 'restorative' element with both the child and their 'victim' required to agree to the proposed course of action. An evaluation conducted for the Youth Justice Board found that more than half of YRDs were issued for theft and a verbal apology was the most frequent outcome. While pilot areas registered a contemporaneous fall in the number of formal pre-court disposals given to children, the authors were wary of attributing that reduction specifically to the introduction of YRDs since non-pilot areas also experienced declines at a similar level (Rix et al, 2011). In retrospect, it would appear that equivalent approaches were being developed simultaneously outside of pilot areas: many police forces started to use what have become known as 'community resolutions' (which operate in a similar fashion to YRDs) to deal with low-level lawbreaking without the need for arrest or a criminal conviction.

Although it is clear that the community resolution is now widely used as a response to children's lawbreaking, relatively little is known about its operation. The Youth Justice Board defines the measure as one that enables the police to deal *'more proportionately with low-level crime ... where the victim's views have been taken into account'* (Ministry of Justice / Youth Justice Board, 2013a: 7). The same guidance suggests that the disposal may be used with or without a restorative element.

More recently, the Board, consistent with Smith's (2020) observation that diversion is predicated on the idea that children should benefit from a second chance before entering the formal youth justice system, rather than being underpinned by a philosophical aversion to criminalisation, has confirmed that the measure is *'primarily aimed at a first-time offence'*

(Youth Justice Board, 2019c). Authorised Professional Practice, published by the College of Policing (2020) and applicable to both adults and children, suggests that:

*‘The most appropriate offences to warrant a community resolution are likely to be low-level criminal damage, low-value theft, minor assaults (without injury) and anti-social behaviour’.*

Community resolutions do not constitute formal disposals and do not contribute to the figures for detected offending; they are however recorded locally and may be disclosed for the purposes of an enhanced Disclosure and Barring Service check. This potential for disclosure is a significant concern given that many children and their families (as well as youth justice practitioners) are unlikely to be aware of the implications of accepting a community resolution (Standing Committee for Youth Justice, 2017; Criminal Justice Joint Inspections, 2018).

National data on the use of community resolutions do not currently distinguish between those given to children and to adults but, in 2018/19, they accounted for less than 2% of all recorded police outcomes (Home Office, 2019b). One might reasonably anticipate that the proportion for child suspects would be considerably higher than this global figure, given that: youth crime is typically of a less serious nature; there is a national focus on reducing FTEs; and that police discretion is likely to operate particularly in favour of younger suspects. Guidance from the National Police Chiefs’ Council (2015) also confirms that other options should always be explored before a child enters police custody and that children should not be criminalised for behaviour that could be dealt with by other means, reinforcing practice that involves the use of informal mechanisms.

An inspection of out-of-court work, published in 2018, confirmed that there is no systematic national monitoring of use of community resolutions for children, but noted that, in the sample areas, the latter formed 39% of cases referred to the youth offending team by the police for assessment or advice (Criminal Justice Joint Inspections, 2018). Since there is no obligation on the police to inform the YOT where a community resolution is given, the actual proportion is likely to be considerably higher. Indeed, the inspection team found examples of children who had been given more than one community resolution without the YOT being told. It is also clear that there are significant variations in practice at the local level, a finding that is, perhaps, unsurprising given the discretionary nature of decision-making (Acton, 2013; Criminal Justice Joint Inspections, 2018).

In any event, it is undeniable that community resolutions account for a significant, and increasing, proportion of responses to children who come to police attention. Moreover, the available – albeit limited – evidence confirms that outcomes associated with using informal disposals of this type are consistent with evidence suggesting that the natural tendency of children to grow out of crime is more likely to occur where no formal sanction is applied. The above inspection, for instance, found that there was little monitoring of the quality or effectiveness of out-of-court disposal work locally, but nonetheless reached a tentative conclusion that in:

*‘The cases that we inspected... short-term reoffending rates following a community resolution that involved YOT intervention were lower than those that follow a caution or conditional caution – and both were lower than reoffending following a conviction’* (Criminal Justice Joint Inspections, 2018: 10).



The rapid growth in such disposals has coincided with the sharp fall in child arrests, suggesting that the two are related. Further indicative evidence in this regard derives from the fact that the largest recorded declines in arrests between 2006/07 and 2018/19 are for more minor offences that might be considered most appropriate for community resolution.

The NAYJ applauds the fact that fewer children are subject to arrest but considers that there may be scope for further reductions. The 16,901 formal youth justice sanctions (for indictable offences) imposed in 2019 was significantly below the number of child arrests (60,208). Some of the gap between these two figures no doubt reflects the greater use of informal measures post-arrest in recent years (an issue addressed below), but it also seems likely that a considerable number of children continue to be arrested where there is insufficient evidence to proceed to prosecution or the matter is too minor to warrant a formal sanction.

In any event, while the fall in arrests has had a significant impact on reducing the number of children entering the youth justice system, it is not, in isolation, sufficient as a full explanation. The decline in FTEs, while contemporaneous with the drop in arrests, has been much sharper: in 2018/99 80% fewer children were arrested than in 2007/08, the equivalent reduction for FTEs was 88%.

In spite of the progress described in the previous paragraphs, thousands of children continue to be taken into police custody each year and there are substantial grounds for concern in relation to their treatment while at the police station. As the Children's Commissioner for England (2017) has observed, children in police custody are particularly vulnerable since:

- The environment is one designed for adults and is unsuited to meet the needs of the relatively small number of children detained. In 2014, just 9% of those held in police custody were children (HM Inspectorate of Constabulary, 2015); given the fall in arrests in the interim, that proportion is currently likely to be considerably lower;
- Children experience time differently from adults, and periods spent in a police cell will feel considerably longer for that group
- Children are more suggestible than adults, and more likely to admit to acts which they have not committed.

For such reasons, children in police custody have been described as '*the most vulnerable of the vulnerable and least able to represent their own interests*' (HM Inspectorate of Constabulary, 2011: 21).

In spite of these considerations, a thematic inspection of vulnerable people in people custody, published in 2015, found that, in their dealings with children, police frequently '*saw the offence first, and the fact that it involved a child as secondary*' (HM Inspectorate of Constabulary, 2015: 18). Children were not regarded as vulnerable by virtue of their age, but only if they demonstrated additional vulnerabilities. The report recognised that being in police detention was particularly stressful for children but that this was not always reflected in their treatment or the processes that were applied. For example, risk assessment procedures did not distinguish between children and adults; and where force was used, there was little understanding of the need for different approaches to restraint of children. Strip searching of children frequently occurred without the presence of an appropriate adults as required by the Police and Criminal Evidence Act 1984 (PACE) Code of Practice.



It is difficult to establish the extent to which such concerns continue to apply because of a lack of consistent data: Home Office statistics on the use of force by police, for instance, are not disaggregated by age, ethnicity, the nature of the force applied and the reason for its use (Cooper, 2019). There is, nonetheless, some evidence that responses to children in police detention may have improved in the period since the 2015 thematic inspection. In particular, there appears to be an increased awareness among police that children are inherently vulnerable and require differential treatment. A reading of four of the five inspections of police custody published between January and June 2020, indicates that:

- Each of the police forces had an effective strategy to divert children from police custody, leading to detention ‘as a last resort’
- Most custody officers had an understanding of safeguarding issues, although it was not always clear from the police records how identified needs were addressed
- Children were for the most part well cared for.<sup>23</sup>

Nonetheless, it is clear that progress has been limited. The inspection reports found that: records were often not broken down in a manner that allowed assessment of responses to children as distinct from all detainees; accommodation for children was rarely distinct, or separate, from that for adults; attention was not always given to prioritising children to ensure that they spent the minimum time possible in custody; and it was often not clear what arrangements had been made at the point of release to ensure their safeguarding.

An additional recent concern is an increasing use of spit-hoods (bags made of mesh-like material placed over a person’s head) for children in police custody. The devices, which are designed to prevent spitting or biting, are currently available for deployment in all but two police forces. Despite evidence of dangers of asphyxiation, the potential for trauma and dehumanising treatment, and a lack of credible verification that they are required to ensure officer safety:

*‘There has been no assessment of how safe they are to use on under-18s and there is no national guidance for spit-hood use on children (Cooper, 2019: 2).*

National data are not collated, but the Children’s Rights Alliance for England has estimated that spit-hood use for children has risen rapidly in recent years, from at least 27 uses in 2016 to 312 in 2018/19. In that period, BAME children accounted for more than one third of the use of spit-hoods on children nationally and 72% in the London (Cooper, 2019).

One of the statutory safeguards available to children in police custody that distinguishes them from (non-vulnerable) adults, is the entitlement to the services of an appropriate adult (AA) who is not their legal adviser and is independent of the police. The role is frequently filled by a parent or carer, but where these are unable or unwilling to attend, or precluded from acting in the role, the youth offending team has a statutory responsibility to co-ordinate non-familial provision. Effective AA provision is central to safeguarding the rights and wellbeing of children while at the police station, albeit that the role is ‘*ill understood and variably exercised*’ (Taylor, 2016: 20). Research conducted three years after the Police and Criminal Evidence Act 1984 which introduced the requirement for an AA, found that delays associated with the obligation

---

<sup>23</sup> The four police forces are: Northumbria, Bedfordshire, British Transport police and Leicestershire. All available at: <https://www.justiceinspectorates.gov.uk/hmicfrs/?sector=police&cat=custody-suites-cat&force=&year=&month=&s=&type=publications>. A report of Sussex police has also been published but the web link was not working. At the time of writing, inspections of police custody have been suspended as a consequence of the Covid 19 epidemic.

to secure their attendance had had the unintended consequence of increasing the duration of children's detention in police custody (McGuire, 1998). More recently, the Children's Commissioner for England (2017) has confirmed that such delays continue to pose a significant problem.

Nine out of ten YOTs responding to the Children Commissioner's survey confirmed that ensuring that the child has adult support for as much of the period in custody as possible before the interview should (always or sometimes) be part of the AA role. But the available evidence from practitioner interviews and case level data suggested that this aspiration was rarely met. Where data were available, the average time between the child's arrest and the police requesting a non-familial AA was 7.7 hours. Once the referral was received, there was a further delay of 1.6 hours before an AA arrived at the police station, resulting in children being held alone in a police cell with no adult support for, on average, 9.3 hours (Children's Commissioner for England, 2017). Given that this delay was prior to interview, the total period spent in police detention before children were released was considerably greater.

The discrepancy between YOTs' understanding of the AA role and the extent of delay, was explained in terms of a mutual understanding between the police and AA providers that:

*'the priority was to ensure an AA presence for the interview but not necessarily in advance of that point... police referrals would be timed in a manner that allowed AA providers to meet agreed response times without AAs having to spend significant amounts of time at the police station prior to the interview'* (Children's Commissioner for England, 2017: 34).

Police accordingly tended to delay making a referral until there was an estimated time for the arrival of the solicitor and for the interview to commence. The impact on children was clear. As one put it:

*'The cells are not nice. You are on your own and you are over-thinking and your head goes a bit psycho – if that's a way of saying it. Having company would help'* (Children's Commissioner for England, 2017: 16).

In the light of such evidence, it is hard to avoid the conclusion that little has changed since HM Inspectorate of Constabulary's assessment in 2011 that the AA role had:

*'evolved into being another part of the custody process, with a focus on complying with PACE 1984 rather than safeguarding and promoting the welfare of children'* (HM Inspectorate of Constabulary, 2011: 7).

The Taylor (2016: 20) review expressed concern that children are frequently held in police custody for *'far longer than is necessary'*. The maximum periods of detention are identical for adults and children: unless authorisation is obtained for extended detention, suspects must be released or charged within 24 hours. Taylor proposed the introduction of a separate limit for children of six hours, other than in exceptional circumstances, consistent with his view that the treatment of children in conflict with the law should be distinct from that of adults. The NAYJ considers that police stations are unsuitable places to hold children and police custody should be used as a last resort, where no other suitable options are available. Where detention is unavoidable, it should be used for the shortest period necessary. The Association accordingly believes that Taylor's proposal should be implemented as soon as possible and any failure to do so is further evidence of the distance to be travelled before a *child first* ethos can be said to

inform arrangements for detaining children at the police station. Disappointingly, the government, in its response to Taylor, made no reference to the recommendation and there have been no indications of any intention to apply different timescales to children in the intervening period.

A further concern relates to overnight detention. Despite a clear statutory requirement that children who are refused bail by the police after charge should, in most cases, be transferred to local authority accommodation rather than remain at the police station, it is clear that the legislation is rarely complied with. The NAYJ highlighted this failure as an issue requiring attention in 2013, noting that a lack of available local authority accommodation tended to discourage police from requesting it (Bateman, 2013). In 2015, HM Inspectorate of Constabulary (2015) confirmed that the statutory provisions continued to be routinely flouted: of 636 cases examined during the thematic inspection, just one had resulted in a confirmed transfer. In 2017, the Children's Commissioner's (2017) study recorded that, of 379 children denied bail by the police, just 18 were shown as having been transferred to local authority accommodation. The remainder of these children remained in police cells overnight, most of them illegally.

In response to such evidence, the Home Office (2017) published a '*Concordat on Children in Custody*', which restates the legal provisions, makes clear the statutory obligations on the police and the local authority, provides '*a protocol for how transfers should work in practice*', and commits signatories to comply with it. By January 2020, according to the Home Office website, 27 police forces and 88 local authorities had signed the *Concordat*. It is however unclear to what extent this initiative has resolved the problem since no national data are published on the numbers of children transferred to local authority accommodation or detained in police custody. Some indication of a continued failure to comply with legislation is given by the fact that four of the most recent, available, inspections of police custody (at June 2020) each makes explicit reference to difficulties in obtaining local authority accommodation to facilitate transfer, with three of the reports recording that transfer was extremely rare, if it happened at all. For instance, in Leicestershire, the most recently published inspection at the time of writing:

*'In the year to January 2020... 24 requests had been made to the local authority for alternative accommodation but none of the children had been moved .... There were escalation procedures but custody officers did not always follow these because it was regarded as a 'paper exercise', as there was no secure accommodation available in Leicestershire, and little prospect of any other appropriate accommodation being found'* (HM Inspectorate of Constabulary and Fire and Rescue Services, 2020: 38)

In six other cases, no request for accommodation was made. Leicestershire constabulary in one of the signatories to the *Concordat*.

## ● Further filters

The difference between trends in arrest and FTEs indicates that further diversionary mechanisms are at play post-arrest. Evolving youth offending team practice has proven pivotal in expanding considerably the number of cases involving children being arrested that are nonetheless resolved without a formal pre-court sanction or prosecution (Roberts et al, 2019; Sutherland et al, 2017). Whereas the functions of YOTs envisaged by the Crime and Disorder Act 1998 focused exclusively on children subject to formal measures, by 2015, at least three quarters of services were delivering preventive activities in one form or another (Deloitte, 2015); of 20 YOTs visited by the Youth Justice Board in early 2015, just one worked exclusively

with statutory cases. In 2017, it was estimated that, on average, 30% of YOTs' caseloads involved non-statutory work (Ministry of Justice/ Youth Justice Board, 2017a).

More recently, the rationale for a thematic inspection of out-of-court disposals conducted in 2018 was anecdotal evidence that YOTs' pre-court work had '*developed considerably beyond*' responding to children subject to cautions (Criminal Justice Joint Inspections, 2018: 15). The inspection found that nationally, most areas were operating diversion schemes that exceeded, and in some cases far exceeded, expectations associated with the statutory framework of cautions and court orders. In each of the seven areas where fieldwork was undertaken, YOTs were involved in decision-making with the police for all cases involving children other than those where a community resolution was given without the child being arrested.

Precisely because it has not been centrally driven in the same way as YIPs and other earlier forms of prevention, YOTs' involvement in diversionary activities has tended to evolve piecemeal as a response to falling statutory caseloads, contributing locally to the FTE target and a more general '*reinvention*' of diversion (Smith, 2014b). The Board's guidance on out-of-court disposals, published in 2013, no doubt helped to legitimise youth justice practice that is not tied to a formal outcome. The guidelines also clarify that an informal outcome might be appropriate whatever the child's previous offending history, so that '*any of the range of options can be given at any stage where it is determined to be the most appropriate action*', although, as has already been noted, this apparently wide scope for discretion is somewhat tempered by the expectation that community resolutions are generally reserved for '*first time offenders*' (Ministry of Justice/ Youth Justice Board, 2013a: 7).

The guidance only deals with community resolutions, youth cautions and youth conditional cautions, but acknowledges that some areas will also have access to other varieties of diversion schemes whose remit, it suggests, should be determined locally. The Board (2015) has also acknowledged the impact of austerity in encouraging a reconfiguration of provision around prevention, prompting YOTs to become more closely integrated with wider services rather than operating as stand-alone partnerships, leading in some areas to what has been called '*post-YOT youth justice*' where youth justice provision has tended to merge with other adolescent services (Byrne and Brooks, 2015).

New Labour's 2008 *Youth Crime Action Plan* can be seen as the major impetus for this wider diversionary shift. As well as establishing the FTE target, the plan provided funding for the development of 'triage' to be piloted in 69 areas in England. Although triage schemes operate in a variety of ways, the shared purpose is to provide the police with a YOT assessment, usually accompanied by the offer of a preventive intervention. This can, in appropriate circumstances, allow the diversion of low-level cases away from a formal criminal justice sanction and permit a recording of 'no further action'. An evaluation of the pilots found that most schemes were based in police custody suites and focussed on low-level offending dealing mainly with children with no antecedent history who had, typically, committed offences such as theft, criminal damage or minor assaults (Institute for Criminal Policy Research, 2012). While triage areas demonstrated a greater reduction in FTEs than the national figure (28.5% against 23%), those conducting the evaluation were not able definitively to attribute that difference to the scheme since the fall in FTEs in pilot areas had commenced prior to its introduction. Moreover, it seems clear that, as with the YRD, similar initiatives were developed in areas that had not received dedicated funding for this purpose. The emergence of such schemes no doubt accounts for at least part of the recorded falls in FTEs outside of formally recognised triage locations.

A further initiative, dating from the same year, encouraged increased informal diversion of particularly vulnerable children from formal youth justice intervention. *Youth Justice Liaison and Diversion Schemes* were piloted in six YOT areas from 2008 with a remit to provide enhanced support to children coming to the attention of the youth justice system with mental health and developmental problems, speech and communication difficulties, learning disabilities and other similar vulnerabilities, by referring them to appropriate provision. It was intended that such support would, in appropriate cases, function to divert children from criminal sanction. An evaluation found that the extent to which such diversion was achieved was variable and depended on police commitment to the scheme. While a paucity of data prevented independent verification by the evaluators, staff estimates suggested that diversion was achieved in around 20% of cases referred. Moreover, access to the scheme was associated with *'improvement in the mental health and wellbeing of young people'*, particularly in relation to self-harm, depression and anxiety (Haines et al, 2012: 89).

In April 2014, a subsequent roll out of liaison and diversion, in line with a national model developed by NHS England, aimed to provide a 24 hour, seven day a week service to children and adults in police custody and at courts in ten trial sites (although they were not limited to these venues). Evaluation established that some services had enlarged their referral process for children to include those subject to community resolutions and those referred by schools or children's services. A total of 3,636 children were seen by liaison and diversion staff across the test sites during 2014/15. Of these, 2,143 (59%) were assessed as requiring no service from the scheme but:

*'Among the minority who did have needs, multiple needs were frequently identified, with up to nine needs in a single case. Among those cases with one or more needs identified, a large proportion had mental health needs. ... [T]he second most common need identified ... was parental or family conflict'* (Disley et al, 2016: 55).

In the 952 cases where the child was assessed as having a mental health need, emotional and behavioural issues were, by far the most common, accounting 59% of cases. A total of 789 children were offered appointments but criminal justice outcomes were recorded for only 137 cases, making it difficult to ascertain the impact of the service on diversion. Nonetheless, one might reasonably assume that some of the fall in FTEs is attributable to children being referred to emotional or mental health support as an alternative to a criminal justice sanction. The roll out of liaison and diversion is continuing with the aim of achieving national coverage by 2021 (Centre for Mental Health, 2019).

Triage and liaison and diversion were centrally driven initiatives in specific localities, but it is clear that similar provision has emerged across England and Wales, albeit with local variation. As already highlighted, a thematic inspection of out-of-court work in YOTs found that diversion was routinely regarded as a core part of youth justice work. More than 90% of respondents to a survey indicated that the YOT management board:

*'took a lead role in the strategic prioritisation, planning for and oversight of work to reduce entry to the youth justice system'* (Criminal Justice Joint Inspections, 2018: 49).

More than four in ten areas (44%) reported that they would expect to assess all children being considered for an out-of-court disposal and a similar proportion said that they *'could be asked to assess cases where the police were considering charging the child'* (Criminal Justice Joint Inspections, 2018: 49). Two in five areas confirmed that joint decision-making with the police was effected through discussions at a multi-agency panel. Conversely, 12% of YOTs indicated

they never undertook assessments prior to a disposal being given. Significantly, triage and liaison and diversion only receive one mention each in the report, both in the context of the range of outcomes available in the seven areas where field work was undertaken, indicative perhaps of considerable variety in how diversionary mechanisms operate and the terminology used at local level.

The inspection report adds weight to Smith's (2020) contention that much diversionary work is informed by an approach predicated on targeted intervention rather than maximum diversion. All YOTs inspected, for instance, '*provided access for children on out-of-court disposals to the full range of interventions and services available for post-court cases*', raising questions about how non-stigmatising such provision might truly be (Criminal Justice Joint Inspections, 2018: 41). But many areas had also developed specific programmes for children subject to out-of-court disposals. Leeds provided '*comprehensive intervention packages*' for children subject to community resolutions, leading the inspection team to raise a note of caution in respect of proportionality of response. In Durham, this work consisted in '*a short, child friendly intervention to help children understand the consequences of continued offending behaviour*' (Criminal Justice Joint Inspections, 2018: 41), suggesting an extension of offence-focused work to the pre-court sphere and providing confirmation of Kelly and Armitage's (2015) earlier finding that such an extension was characteristic of diversion in some localities.

Other areas have gone in a rather different direction. Surrey, for instance, has established a joint decision-making panel with the stated objective of providing alternatives to criminalisation wherever possible. The panel considers all cases where the child makes an admission, unless an immediate community resolution is given or the offence is 'indictable only'. Most cases that result in out-of-court disposal result in what is referred to locally as a 'youth restorative intervention' (YRI), an informal outcome that, unlike a caution, avoids a formal criminal record. YRIs account for 90% of out-of-court disposals in the county. The structure of the service, which is integrated and does not have a distinct YOT, enables the same case worker to both oversee the YRI and continue to work with the child as a user of Family Services, should that be required, once the intervention is completed (Criminal Justice Joint Inspections, 2018). An evaluation of the initiative, published in 2014, credited the YRI with contributing towards Surrey having '*the lowest FTE figures in England and Wales*' (Mackie et al, 2014: 25). Significantly, the model is one that explicitly recognises the '*importance of inclusion, integration and participation*' (Byrne and Brookes, 2015: 10).

The 'Bureau' model established in Swansea, and adopted in other parts of Wales, claims to embrace a *child first* ethos and distinguishes itself from diversionary mechanisms such as triage on the basis that it does '*not seek to apply any specific interventions relating to the offence in question, whether restorative or rehabilitative*' (Smith, 2020). Nor is informed by tenets of '*minimal or non-intervention*'. Rather it seeks to '*normalise youth offending*' by diverting children into support services that improve access to their entitlements (Haines et al, 2013: 167). The importance of diverting to mainstream provision is reinforced by findings of a Norwegian study which draws attention to the fact that frequently, from the child's perspective, '*punishment is largely an unspoken aspect of diversionary practices*' (Anton Sandøy, 2020: 911).

In 2015, the All Party Parliamentary Group for Children (2015) drew attention to the fact that the use of informal diversion, whatever model was employed, was constrained by the limited options available to the police when recording outcomes for offences. In particular, there was a potential for a referral to another agency in lieu of a formal sanction to impact negatively on clear up rates, since there was no official means for capturing the decision. This impediment



was removed with the introduction, in April 2015, of an additional, government endorsed, outcome which provides a formal mechanism for recording such referrals and has accordingly further facilitated the adoption of diversionary measures.

Outcome 20 applies to those offences where '*action is taken by another body /agency*' other than the police. It is not restricted to children, and data is not disaggregated by age. Nonetheless, given that its introduction was a response to a recommendation of the All Party Parliamentary Group for Children and that there has been a particular impetus to expand informal responses to children in police custody, it seems intuitively likely that children subject to informal diversion will feature prominently among those disposed of in this manner. In 2018/19, 54,391 offences were assigned to Outcome 20, (Home Office, 2019e), an 18% rise over the previous year, and an increase of 56% since 2016/17.

The above developments have all contributed to an acceptance that informal diversion should feature highly among the options considered when children come to the attention of the police. Disposals of the sort described above are not captured in the figures for detected offending, and they accordingly provide alternatives to formal youth justice disposals for children who might otherwise become FTEs, as well as a smaller number who have previously received formal sanctions. As a consequence it appears likely that the expansion in informal diversion, alongside continued underlying reductions in children's offending behaviour, account for both the falls in FTEs and detected youth crime.

As noted above, there are considerable variations at a local level in the nature of diversionary mechanisms employed, the population of children to whom they are available, the philosophical assumptions which underpin them and their effectiveness - whether in terms of achieving higher levels of decriminalisation, reducing reoffending, or directing children to appropriate networks of support that enhance their wellbeing. There is moreover a corresponding lack of national data that would allow any systematic analysis of such variation.

Nevertheless, it appears likely that such variability might help to account for at least some of the geographic differences in trend data for first time entrants to the youth justice system. As noted above, the number of FTEs across England and Wales fell by 88% between 2007/08 and 2018/19. All youth offending team areas saw a considerable decline over this period, but the magnitude of the decrease ranged from a remarkable 95.9% in Gloucestershire to 58.2% in Stoke-on-Trent (Ministry of Justice / Youth Justice Board, 2020a; 2018). As shown in Table 12, London YOTs and those in the South West are over-represented among those with lower reductions; conversely, Welsh YOTs and those in the South East feature heavily among areas with higher falls. Table 13 indicates that this is broadly in line with regional averages.

It is important to acknowledge that the fall in FTEs should not be taken as a straightforward indicator of the extent of increased diversion in a particular area since the baseline figures will represent different starting points: some of those areas registering a relatively low drop in FTEs may, in other words, have had relatively high levels of diversion prior to 2007 and vice versa. Moreover, in areas where serious offending makes up a higher proportion of youth crime, reductions in FTEs may be harder to achieve given the nature of guidance which dictates that informal disposals should be reserved for relatively minor episodes. Despite these caveats, it would appear that some areas have been more successful than others in reducing the criminalisation of children; the data would also suggest that there is considerable scope in some places to lower further the number of FTEs to the system.



**Table 12**

**Percentage falls in FTEs, 2007/08 to 2018/19, by YOTs with highest and lowest percentage reductions**

Derived from Ministry of Justice / Youth Justice Board 2020a and 2018: table 2.8

YOTs with highest reductions		YOTs with lowest reductions	
YOT	Fall in FTEs (%)	YOT	Fall in FTEs (%)
Gloucestershire	95.9%	Brent	78.4%
East Sussex	95.2%	Swindon	78%
West Sussex	95.2%	Bournemouth	77.6%
North East Lincolnshire	94.9%	Slough	77.2%
Conwy	94.7%	Barking and Dagenham	76%
Hartlepool	94.5%	Redbridge	75.5%
Monmouthshire	94.3%	Poole	75%
Lincolnshire	94.2%	Enfield	73.9%
Torfaen	94%	Waltham Forest	69.8%
Brighton and Hove	93.9%	Stoke-on-Trent	58.2%

**Table 13**

**Percentage falls in FTEs, 2007/08 and 2018/19, by region**

Derived from Ministry of Justice / Youth Justice Board 2020a and 2018: table 2.8

Region	Fall in FTEs (%)
South East	90.9%
East	90.8%
Wales	90.2%
North East	90.1%
Yorkshire and Humber	89.6%
North West	88%
East Midlands	87.2%
South West	86.9%
West Midlands	85.8%
London	82.4%

In spite of clear progress, the lack of consistent information is of concern for a number of reasons. First, the absence of any systematic aggregation of outcomes for children who have been successfully diverted represents a missed opportunity to gather further evidence of the benefits of decriminalisation. Second, as suggested above, the rediscovery of diversion appears to encompass a range of different practices and underlying rationales (Smith, 2014; 2020), some of which contain residues of the influence of risk management and early interventionism. Such variation implies that it is not sufficient to interpret *‘current trends as simply the rebirth’* of the 1980s (Kelly and Armitage, 2015: 130). Third, the absence of robust data undermines accountability in relation to proportionate decision-making at a critical stage of the youth justice system, where the potential for outcomes that disadvantage BAME children is clearly present. Further clarity on this broad range of potentially competing approaches is required to determine in what ways outcomes are influenced by the conceptual model adopted, whether greater reductions in FTEs could be achieved in some areas and for

BAME children, and the extent to which diversionary practice reflects a *child first* approach, or other philosophical assumptions.

Finally, it seems evident that the extent and efficacy of preventive work undertaken by YOTs at the gateway to the justice system to prevent child criminalisation is not captured in the indicators by which the performance of the youth justice system is currently measured. As a 'stocktake' of YOTs conducted in 2015 put it, '*there is a discrepancy between what YOTs do and what is measured*' by central government (Deloitte, 2015: 3). A more recent survey confirmed that more than three quarters of YOTs considered that a lack of resources was a significant barrier to the delivery of effective preventive work (Ministry of Justice / Youth Justice Board, 2017a). Other research has highlighted practitioner fears that since much diversionary activity was '*motivated by fiscal pressure rather than an ideological shift away from default use of the formal system*', it may be susceptible to rapid reversal without the development of a robust evidence base for the cost effectiveness of non-statutory work (Estep, 2014: 14). The NAYJ considers this pessimistic assessment to be a realistic one than can be mitigated by greater transparency and a more deep-rooted commitment to *child first* principles.

### ● It's formal but it's not court

The NAYJ believes that a primary objective of a progressive response to children's offending behaviour should be to avoid formal contact with the youth justice system in favour, where necessary, of support and assistance from mainstream children's and youth services. As argued in the previous section, much of the current focus on informal diversionary mechanisms continues to be a function of criminal justice agencies. While such arrangements may not be ideal, they nonetheless clearly represent a more child friendly approach than that which characterised youth justice up until the introduction of the FTE target. If decriminalisation is not possible, the Association considers that opportunities to divert children from prosecution by means of a formal pre-court disposal – currently a caution or youth conditional caution – should be maximised.

Broadly speaking, it is possible to understand the extent to which diversion from court to a formal pre-court sanction occurs in terms of the contours of youth justice policy and practice that define the particular period. However, for reasons outlined in more detail below, these wider mediating factors mean that the level of cautioning (or equivalent measures) at a particular point in time is not indicative in any straightforward manner of a progressive (or otherwise) youth justice practice.

A commitment to avoiding children appearing in court was a key precept of youth justice orthodoxy in the 1980s that received full endorsement from central government. Home Office guidance to the police, issued in 1985, for example indicated that prosecution of children should not be undertaken:

*'Without the fullest consideration of whether the public interest (and the interests of the juvenile concerned) may be better served by a course of action which falls short of prosecution'* Home Office, 1985, cited in Nacro, 1987: 15).

This consensus was manifested in a rise in the proportion of children given a police caution with the consequence that substantially fewer children were prosecuted. As a proportion of substantive disposals, cautions accounted for less than half in 1980 but more than three quarters in 1990 (Allen, 1991).

The allegiance to diversion waned rapidly early in the following decade, as a predictable by-product of the re-politicisation of youth crime under the ‘punitive turn’. Revised guidance discouraged the use of cautions for serious offences and noted that multiple cautioning could undermine confidence in pre-court disposals (Home Office, 1994). The shift in mood was given statutory expression in New Labour’s Crime and Disorder Act 1998. The legislation mandated that informal action was to be used only in exceptional circumstances. Guidance published in 2002 made clear how far the new scheme was intended to repudiate earlier understanding of the positive role that decriminalisation might play:

*‘Informal action should be taken only in exceptional circumstances where the police consider that it will be sufficient to prevent future offending. This will almost always be in cases of anti-social behaviour where the behaviour falls short of being ‘criminal’ or for very minor non-recordable offences’ (Home Office / Youth Justice Board, 2002: 8).*

Sections 55-66 of the Act introduced a ‘three strikes’ mechanism in the form of reprimands (for a first offence) and final warnings (for a second or more serious first offence) which replaced police cautioning for those below the age of 18 years. Henceforth, prosecution would be required on the third occasion that the child came to police attention at the latest, irrespective of their circumstances or the nature of the behaviour involved. Moreover, where a child had a conviction, he or she was not eligible for a pre-court disposal in relation to any subsequent offending, however minor, even if they had not previously had their ‘quota’ of pre-court options. This might occur, for instance, where a child gave a ‘no comment’ interview to the police for a first time low-level offence, rendering them ineligible for reprimand or warning at that point. But if the police, as the guidance intimated that they should, prosecuted the child, that individual would then be precluded from receiving a reprimand or warning for any future misdemeanour. These legal provisions, it might be noted increased the potential for disproportionality given that BAME children, who have less trust in the justice system and the lawyers who represent them (Howard League for Penal Reform, 2019), may be more likely to exercise their right to silence even if doing so may not be in their best interests.

The final warning scheme, as it became known, was strongly influenced by New Labour’s predilection for formal intervention as a default response to early indications of delinquency, while enhancing the government’s ‘get tough’ credentials (Robinson, 2014). It involved a statutory presumption that a final warning would trigger a ‘behavioural change programme’ (Hine and Celnick, 2001) and the Youth Justice Board introduced a target that 80% should do so (Pragnell, 2005; Home Office / Youth Justice Board, 2002), a target that was met by 2004 (Smith, 2014). Reprimands might also attract such a programme where assessment by the YOT identified ‘risk factors of re-offending’ (Home Office / Youth Justice Board, 2002: 20). While the child’s co-operation was technically voluntary, non-compliance was citable in court in the event of subsequent offending, thereby implying an element of compulsion (Robinson, 2014). As Roger Smith (2014:105) argues:

*‘Diversion was thus institutionalised and circumscribed in a way that also guarded against the accusation of being soft on crime’*

The rationale presented for the new pre-court framework was hardly compelling, consisting largely of assertions that cautioning did not work and that early intervention was necessary if youth crime was not to spiral out of control, in spite of, well-established, evidence to the contrary (see for instance, Goldson, 2000). Declarations that intervention would lead to lower levels of reoffending were moreover undermined by a major study of the final warning scheme which found no statistical differences in recidivism rates irrespective of whether or not the

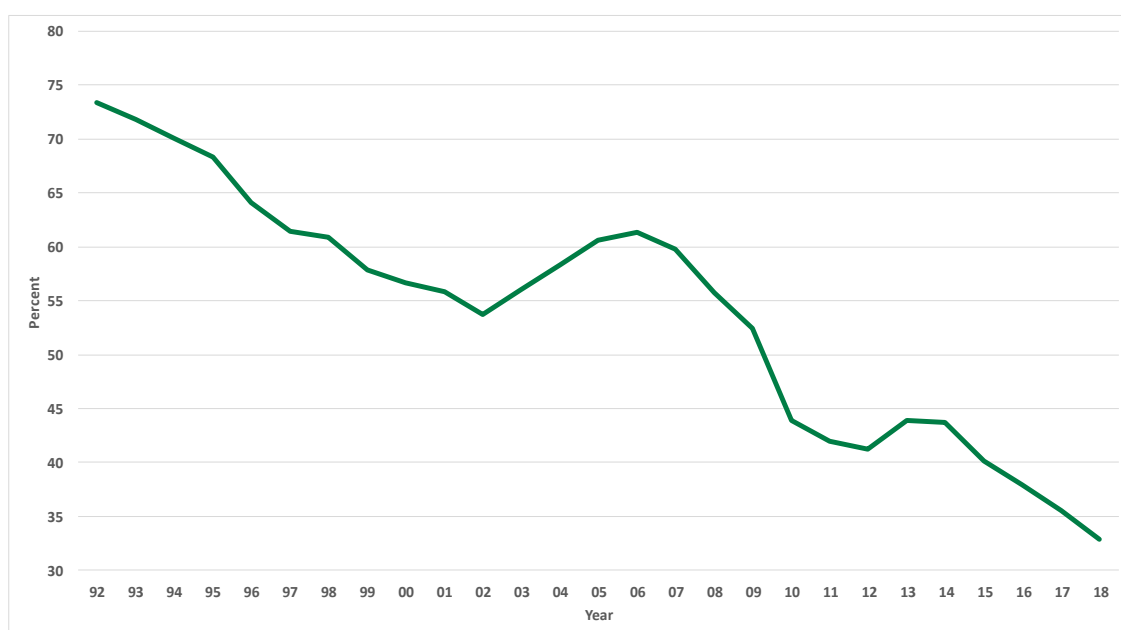
child was assessed as requiring intervention, or indeed whether or not they had been seen by the youth offending team (Hine and Celnick, 2001).

The predictable consequence of the change in mood and legislation was an increase in the proportion of children needlessly caught up in the court process: in most years of the decade, the number of children subject to prosecution rose in spite of the overall decline in detected youth offending (Nacro, 2009). In the ten years from 1992, the rate of diversion (formal pre-court sanctions as a proportion of total substantive youth justice outcomes imposed for indictable offences) fell from almost three quarters (73%) to just over half (54%) (Bateman, 2017).

**Figure 15**

**Rate of diversion 1992 to 2014 as percentage of all substantive disposals: indictable offences**

Derived from Bateman 2017 and Ministry of Justice, 2019b



As shown in Figure 15, the downward trend was reversed in 2002, with a rapid rise in the rate of diversion up to 2006. The pattern thereafter indicates a more or less steady decline in the ratio of formal pre-court disposals to convictions to 2018 (Ministry of Justice, 2019b).

The graph appears, on the face of it, to suggest a fairly continuous trajectory, albeit with some fluctuation, over the whole period: by 2018, the rate of diversion had fallen to just under 33%. The pattern is, however, more complex than such a reading would imply. During the 1980s, a growth in the use of cautions relative to prosecutions signalled a progressive decriminalisation of children. Conversely, the period to 2002 is, as outlined above, indicative of reducing levels of diversion. The bulge shown over the next four years is not, however, evidence of a resurgence of diversionary impulses. Instead, it reflects the impact of the sanction detection target which led to large numbers of minor offences that would previously have been dealt with informally, being drawn into the formal ambit of the youth justice system. As a consequence, the use of reprimands and final warnings grew more rapidly than convictions, although the latter also rose. The relative increase in formal pre-court measures during this short period is accordingly evidence of net-widening rather than demonstrating that children were less liable to prosecution: paradoxically, the proportional growth in diversionary sanctions which, hitherto had been indicative of a diversionary impetus, was no longer so.

Similarly, the pattern in the period since 2006/7, does not signify a return to the dynamics of the 1990s and early 2000s. Rather it is a function of informal diversionary measures displacing formal out-of-court disposals to a greater extent than prosecutions. Convictions of children have in other words fallen at a slower rate than pre-court disposals, leading to an increase in the *rate* of prosecution. A reduced rate of diversion is thus ironically symptomatic of increasing diversion outside the formal parameters of the system.

In one sense, this pattern is an expected one. Where the use of informal responses becomes more prevalent, it is inevitable that children in trouble for the first time and those committing minor infractions of the law will derive the greatest benefit. This is particularly true where a focus on reducing FTEs is a significant driver of evolving practice. However, comparing the current period with the 1980s when diversionary impulses were also to the fore, is potentially instructive.

In that earlier decade, there was also a considerable expansion in the use of non-formal mechanisms - although as in the present period it is difficult to quantify the extent of that growth (Pitts, 2003). What distinguishes the two periods however, is that the rate of diversion did not fall during the 1980s, suggesting that there was both a decriminalising *and* a diversionary (as in diversion from court) tendency. From 2007 onwards, the former has expanded (as in the 1980s) while the latter has contracted in relative terms (in contrast to the 1980s). The lack of robust data for either period prevents any detailed comparative analysis of the extent of offending successfully kept outside the formal youth justice apparatus. Nonetheless, the difference in diversionary trends does raise the prospect that there is considerable potential –as yet untapped- for a more rapid reduction in current levels of prosecution than has so far been achieved.

That there is such a potential receives weight from two lines of argument, albeit that they are both suggestive, rather than definitive. The first consideration relates to statutory provisions determining the range of options that exist for children who come to the attention of youth justice agencies other than prosecution. During the 1980s, the only available formal pre-court disposal for children was the police caution, which could be used at any point in criminal proceedings if the police determined that it was appropriate to do so. From 2000 until 2013, however, the final warning scheme remained in place: as discussed above, children who came to police attention for offending between those dates were entitled to no more than two disposals before prosecution was mandated even for trivial transgressions. As a consequence, a large number of cases that might, during the 1980s, have been deemed suitable for caution, or an informal warning of some kind, could not be considered for a pre-court option.

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) abolished the final warning scheme and the rigid strictures associated with it. Warnings and reprimands were replaced by youth cautions and youth conditional cautions from 8 April 2013 onwards. The principal distinction between the new provisions and those they replaced is that a youth caution can, as during the 1980s, be issued, where the police consider it an appropriate outcome, irrespective of any previous pre-court disposals or convictions (Hart, 2014). (The legislation does however retain the restriction on a court imposing a conditional discharge for any further offending within 24 months on a child who has received a second youth caution – a proscription that did not apply to cautions prior to the Crime and Disorder Act 1998.) Youth conditional cautions, which had hitherto been limited to 15 and 16 year-olds in pilot areas, also became available for all children following implementation of LASPO. It is not clear to what

extent this new power is exercised. None of the published data distinguish conditional from standard cautions, but this may be an indication that the former are used sparingly.

Although it is difficult to draw firm conclusions, the slight increase in the rate of diversion shown in Figure 15 during 2013 and 2014 might reflect the impact of these statutory changes, as practitioners took advantage of the opportunities afforded by the abolition of final warnings. Disappointingly, the subsequent trend data do not register any further shift towards a greater use of cautioning as an alternative to court proceedings. It may be that the focus on FTEs and the rigid use of offence gravity scores (which have survived the abolition of the final warning regime) in at least some areas, continues to discourage a use of formal pre-court measures where a decision not to use an informal option has been taken.

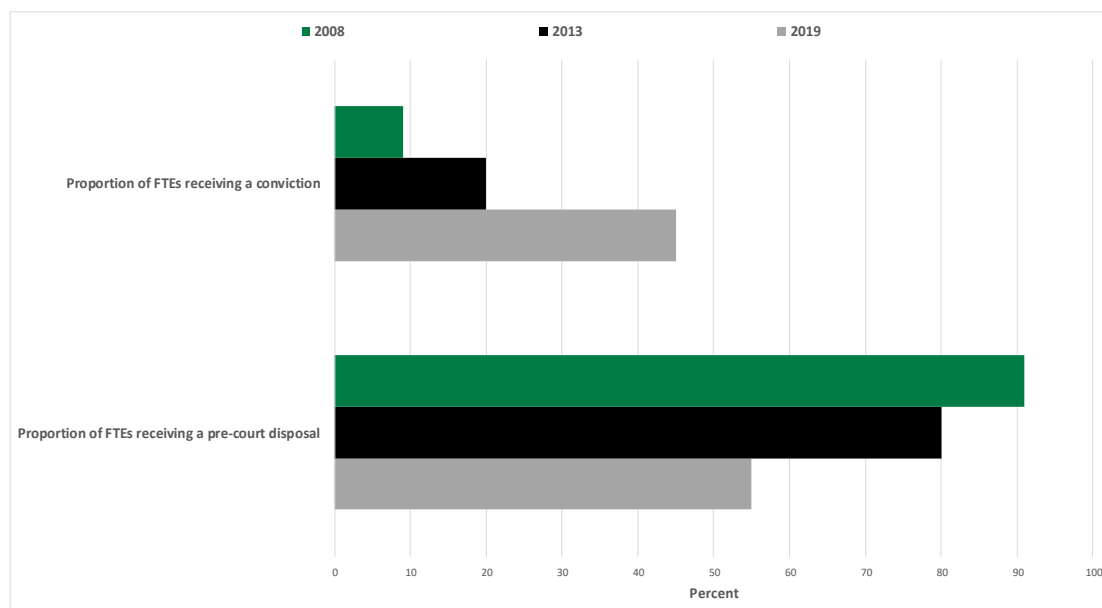
The second reason for supposing that there is potential for increasing the use of cautions in order to reduce prosecution, derives from a consideration of disposals given to children who are first time entrants to the system since the introduction of the FTE target (Bateman and Wigzell, 2019). As shown in Figure 16, whereas in 2008 the vast majority of children entering the youth justice system for the first time received a pre-court disposal (91%), by 2019, this had fallen to 55%. Conversely, in the former year, fewer than one in ten (9%) FTEs received a conviction, but by 2019, this had risen to 45% (Ministry of Justice/ Youth Justice Board, 2020a). Simply put, there has been a marked shift in outcomes for children who enter the youth justice system for the first time over the past decade so that they are much more likely to receive a conviction than they were ten years ago.

Some of this may be a predictable consequence of the overall reduction in FTEs: children who enter the system for the first time are potentially more likely to have committed more serious offences as minor matters are increasingly filtered out. It may also reflect the fact that some children become first time entrants because they do not admit the offence at the police station, thereby rendering them ineligible for a formal pre-court sanction. Nonetheless the scale of the shift for this group of children from caution to conviction, suggests that a growing *'proportion of children with no criminal record are 'skipping' the caution stage'* (Bateman and Wigzell, 2019: 15). Moreover, it appears clear that the statutory changes to the pre-court system implemented in 2013 made no discernible difference to the existing direction of travel in this regard. The fact that, in 2019, approaching half of children with no prior detected offending were subject to court proceedings, lends further weight to the supposition that there may be scope to increase the use of cautioning in order to divert larger numbers of children from court. This conclusion is consistent with a recent study of youth court practice in three areas which came across cases where children *'were inappropriately in court for minor matters'* that could have been dealt with through a pre-court disposal (Hunter et al, 2020: 14).

**Figure 16**

**First time entrants by type of disposal (pre-court disposal or convictions) as a percentage of FTEs: 2008, 2013 and 2019**

Derived from Ministry of Justice/Youth Justice Board, 2020a



The NAYJ welcomes the recent developments towards decriminalisation and diversion as being broadly consistent with the research evidence and representing significant progress towards a more child friendly approach. At the same time, it is concerning that the rediscovery of diversion, at the level of policy and among some practitioners, appears to be, at least in part, a pragmatic response to workload and fiscal constraint rather than a principled recognition that the youth justice system should be used as a mechanism of last resort (Estep, 2014; Smith, 2020). There is some evidence that the potential of abolition of final warnings to divert children from court through maximising the use of cautions has not been maximised (Bateman and Wigzell, 2019). Finally, as observed earlier in the report, there has been no attempt to redirect the capacity to work with children in trouble towards mainstream provision. In 2016, for instance, it was estimated that expenditure on youth services had shrunk by £387 million over the previous six years (Unison, 2016).

The retention of any savings from increased diversion for services to young people is essential to ensuring that disadvantaged and vulnerable children who are diverted from formal sanctions receive appropriate assistance and support in the longer term. It is also a necessary precondition of delivering the promise of a *child first* system of justice. Otherwise, as the *Centre for Social Justice* (2012: 11) has pointed out, the youth justice system will continue to be ‘a backstop, sweeping up the problem cases that other services have failed, or been unable, to address’. Such extended provision is also a practical prerequisite of being able to argue convincingly for a substantial rise in the age of criminal responsibility, since systemic removal of younger children from the jurisdiction of the youth justice system will inevitably increase demands on other services for children with high levels of need (Bateman, 2012).



## Chapter 7

# Here comes the judge

### ● The framework for trial (and error)

Where prosecution ensues, the NAYJ considers that the trial process should be separate from that for adults and specifically designed to be child friendly. It is accordingly a matter of acute concern that, as the UN Committee on Rights of the Child (2016: 21) put it in its most recent assessment of the UK's compliance with the UN Convention on the Rights of the Child, '*some children are tried in adult courts*' despite a general presumption that children subject to criminal proceedings will be processed in the youth court '*which is best designed to meet their specific needs*' (Sentencing Council, 2017: paragraph 2.1).

Where they are charged by the police, children are generally released on bail to the youth court. If they are refused bail, however, they are taken to the next available court and, if there is no youth court sitting, this will be an adult magistrates' court by default. This is a systemic issue that further penalises children detained by the police. While no figures are published, it is evident that it is a growing problem as a consequence of court closures, and a corresponding reduced frequency of youth court sittings. Between 2010 and 2020, 51% of magistrates' courts were closed (House of Commons Library, 2020) but the relative impact on youth courts is difficult to ascertain because, according to the *Guardian* newspaper, the Ministry of Justice does not hold the requisite information on the grounds that there is '*no legal or business requirement*' for it to do so (Pidd, 2019). It is, nonetheless, clear that some areas only have one youth court sitting each week so that children refused bail by the police on any other day will inevitably be put before the adult court (Gibbs and Ratcliffe, 2018). The number of children appearing in the adult magistrates' court is further swelled by the requirement that where a child has an adult co-defendant, they will be 'carried' by that adult into the adult court.

Unlike those who sit in the youth court, adult magistrates are not required to have training in youth issues, the legal adviser may similarly have little experience of the legislation governing children, the duty solicitor and prosecutors will not be child specialists, and the youth offending team will not automatically be present to advise the court and advocate on behalf of the child. This lack of specialism is reflected in differential outcomes. For example, in the year ending March 2017, 41% of custodial remands imposed on children were made by adult courts (Gibbs and Ratcliffe, 2018).

The general principle that children will be 'carried' by an adult with whom they are co-charged applies equally to cases where the latter elects for Crown court trial or the magistrates' court refuses jurisdiction in respect of the adult. Although the Sentencing Council (2017: paragraph 2.11) has indicated that the higher court:

*'should conclude that the child ... must be tried separately in the youth court unless it is in the interests of justice for the child or young person and the adult to be tried jointly',*

it would appear from the data cited below that this guidance is often not followed. Children may also face Crown court trial where they are alleged to have committed 'grave crimes' (for details, see Sentencing Council, 2017: 8-9) and, in such cases, the maximum custodial sentence that could be imposed on an adult becomes available for the child, irrespective of their age.

Moreover, whereas custodial sentences can only be imposed in the youth court on children aged 12 years or older, the Crown court has the power to imprison children from the age of ten (Nacro, 2007).

Following a ruling by the European Court of Human Rights, in 2000, that the two boys convicted of the murder of James Bulger were denied a fair hearing because they were unable to participate effectively in the proceedings, Crown courts have been required to make adjustments to accommodate children. Nonetheless there is a wide consensus that the Crown court, designed as a venue to deal with serious adult offending, remains a distinctly inappropriate setting for those below the age of 18 years. In addition to the UN Committee on the Rights of the Child's concerns, noted above, disquiet has also been expressed in Lord Carlile's (2014) inquiry into the operation of courts dealing with children's criminal behaviour. Charlie Taylor, in his review of youth justice, similarly observed that:

*'[t]he Crown Court is an intimidating atmosphere for children and its processes and physical layout are not easily adapted for children. I spoke recently to a barrister involved in the trial of two girls accused of murder who described the atmosphere in the court – which is open to the public and reporters – as 'like a circus'. It is difficult to see how, in such circumstances, the court can fulfil its statutory duty to promote the welfare of the child' (Taylor, 2016: 31).*

Taylor also pointed out that since Crown court judges hear youth cases relatively infrequently, it is unrealistic to expect them to develop or retain the necessarily skills to deal with children appropriately. He accordingly concluded that in the longer term, *'consideration could be given to trials involving children no longer taking place in the Crown court'* (Taylor, 2016: 31). The government, in its rejoinder, maintained that removing children from that venue would deny them access to jury trial. This response fails to recognise that a range of commentators have previously suggested that, in cases of grave crimes, youth court proceedings might be modified to include a form of jury (see for instance, Lord Justice Auld, 2001; Nacro, 2002). It also ignores another possible option. Introducing substantially shorter maximum sentences for children than for adults might allow the youth court to retain jurisdictions for all cases, a consideration which receives attention in due course. In any event, the government's limited assurance that it would discuss these issues *'with the judiciary and other interested parties'* (Ministry of Justice, 2016: 19) appears to have gone nowhere, a further indication of the gap between the *child first* rhetoric espoused by the YJB and a commitment on the part of central government to implement measures necessary for achieving the aspiration.

The number of children tried at Crown court has declined in the recent past but at a slightly lower rate than would be expected given the fall in the overall levels of child convictions. Between 2009 and 2019, there was reduction in convictions of children for indictable offences in all courts of 75%; the equivalent decrease for children tried at Crown court was 71%. As a consequence, the use of the Crown court for children has actually increased in relative terms (Ministry of Justice, 2020a). This is despite a growing consensus that:

- Appearing in the Crown court extends considerably the time before the case concludes and children can get on with their lives;
- As a consequence of extensive delays associated with Crown court trials, many children turn 18 prior to conviction and are accordingly sentenced as adults even if the offence was committed much earlier;

- The Crown court is ill-adapted to meet the needs of children and precludes their effective participation in proceedings;
- It subjects children to the risk of custodial penalties of the same duration as those available to adults, up to and including life imprisonment, thereby allowing the imposition of inappropriate sentencing.

The recent reduction in children appearing in the Crown court notwithstanding, the numbers involved remain substantial. During 2019 almost 1,000 children appeared for trial in the Crown court, of whom 27% were of BAME origin, indicating a considerable disproportionality for minority ethnic children. As in other areas of the youth justice system, over-representation of Black children and those of mixed heritage was particularly pronounced: these two groups accounted for 22% of all children appearing at Crown Court.

It is also evident that the large majority of children tried in this adult arena could be dealt with in the youth court given the nature of the disposal imposed. As shown in Table 14, 971 children appeared for trial in the Crown court during 2019, of whom 89% received a sentence of some description. More than four in ten were made subject of a non-custodial sentence, indicating that the offending was not at the highest level of seriousness. A further 13% were given a detention and training order, a custodial disposal within the powers of the youth court. Fewer than one in three received a custodial sentence that could only be made in the Crown court.

**Table 14**

**Breakdown of cases involving children at Crown court:**

Derived from Ministry of Justice, 2019a: Crown court data tool

	Number	Percentage of children appearing for trial
Children appearing for trial at Crown court	971	100%
Sentenced	864	89%
Non-custodial sentence	430	44%
Detention and training order	130	13%
Long term detention for grave crimes / dangerousness	304	31%

As noted earlier in the report, over-representation of minority ethnic children – particularly Black children – among those receiving sentences of long-term detention is considerably more pronounced than would be anticipated given the composition of those appearing at Crown court (a composition which, as noted above, already contains a disproportionality). Forty per cent of Black children appearing in Crown court for trial were given such orders compared to an equivalent figure of 26% for white children.

The NAYJ considers that children should never appear in the Crown court. It is evident too that, even without the statutory change that abolition would require, more than two thirds of children currently subject to Crown court proceedings could be dealt with in the youth court. The Sentencing Council (2017: 7) guideline requires that, because of the *‘greater formality and greatly increased number of people involved (including a jury and the public) should be reserved for the most serious cases’*. The data suggest that this prescription is routinely ignored.

While the NAYJ considers that all children subject to criminal proceedings should be dealt with in the youth court, this should not be thought to imply that trial in this venue is unproblematic. One concern which has become more pressing in recent years is that there is typically an extensive delay between a child being arrested and their court appearance. Once might have anticipated that the sharp reduction in throughput of the court would have provided an opportunity to ensure that cases were dealt with expeditiously, but the reverse appears to be true. An investigation by the *Guardian* newspaper, published in November 2019, found that while prosecutions of children had fallen by three quarters, the average period between the offence and the completion of court proceedings for cases with a child defendant had risen, from 101 days in 2011 to 142 days in 2018 (Pidd, 2019), an increase which was attributed to the closure of youth courts described above. There was a further rise of 12 days, to 154, over the next 12 months (Ministry of Justice / Youth Justice Board, 2020a: supplementary table E1). The average disguises significant differences: the author of the *Guardian* article notes that five out of the nine magistrates' courts in Greater Manchester had closed since 2011, with the consequence that '*children from Bury and Rochdale, which no longer have their own court, waited 324 days on average last year*' (Pidd, 2019). During August 2019, there were just two trials in Manchester youth court and, in both cases, more than two years had elapsed since the children were arrested (Pidd et al, 2020).

A recent study of youth court practice by the Centre for Justice Innovation also highlighted lengthy delays in children coming to court: in the three fieldwork sites, cases took an average of 188 days from offence to completion compared to 150 days five years ago. More serious offences were typically taking more than a year (Hunter et al, 2020). These are periods during which children have the weight of the case hanging over them, and they are not able to get on with their lives. It is unreasonable to expect that they (or any other witnesses) will have a clear recall of events; and any penalties imposed will be dissociated from the behaviour to which they are intended to be a response. Given children's rapid pace of development, a sentence imposed a considerable period after the offence may have the effect of focusing the child's attention on their past mistakes rather than encouraging them to focus on their future, even if they have already moved on and left that lifestyle behind them.

The maxim '*justice delayed, is justice denied*', attributed to William Gladstone, the nineteenth century prime minister, has been confirmed by research which shows that timeliness is a critical factor in determining whether or not people consider that the justice system is fair (see for instance Sourdin and Burstyn, 2016). Members of the judiciary, interviewed by the Centre for Justice Innovation, acknowledged that the extent of delay in children's cases sometimes constituted an abuse of process: as one district judge commented: '*of course, [the child] keeps on having birthdays; this isn't fair on him*' (Hunter et al, 2020: 13).

The research concluded that a significant factor explaining increased delay, exacerbating the impact of court closures, was the introduction, in the Police and Crime Act 2017, of the power for police to 'release under investigation' (RUI) while inquiries were ongoing as an alternative to release on bail. Although intended to ensure that individuals were not subject to police bail for considerable periods, in a form of legal limbo, the new measure, precisely because it has no investigatory timescales attached, has tended to increase the time between the offence and the case coming to court. A freedom of information request by the Law Society found that, in 2017/18, following the introduction of RUI, more than four times as many suspects were released under that provision rather than subject to police bail. Where forces were able to provide data, the average period that individuals spent subject to the former status was significantly longer – 139 days against 86 days - than for those on police bail (Law Society,

2019). The Home Office has also acknowledged concerns that RUI has been used as an administrative tool by the police because it requires '*lower managerial oversight compared to when individuals are given pre-charge bail*' (Home Office, 2020b: 28). The government has recently consulted on whether to apply the same timescales to RUI as currently govern pre-charge bail (Home Office, 2020b), but the outcome of that consultation is not known at the time of writing. The NAYJ supports the intention of the proposal but given the particular difficulties of delays in the youth court, considers that tighter deadlines should be applied to children.

Once children get to the youth court, there are further issues which militate against the experience being a child friendly one. In his review of the youth justice system, Taylor (2016: 27) described the youth courts as providing '*an essentially modified*' version of arrangements that pertain in the adult magistrates' court. Some youth courts have attempted to alter layouts with seating on a single level, rather than having a raised bench, and some areas have also dispensed with a dock. However, such relatively informal settings appear to be available to only a minority of children (Hunter et al, 2020). Where youth courts sit in rooms designed for adult trials, children are more likely to become detached from the process and less likely to engage in, or understand, proceedings. Nonetheless, some professionals continue to express a preference for the formality of a traditional courtroom, making it less likely that adaptations will be made (Hunter et al, 2020).

The Youth Court Bench Book draws attention to the importance of engaging with children appearing in court, ensuring that they understand proceedings and encouraging them to participate effectively (Judicial College, 2020). Recent research has, however, confirmed that children frequently struggled to comprehend what is happening in court and that jargon and difficult language continued to be a feature of proceedings (Hunter et al, 2020). Engagement between the child and the judiciary was often limited; children frequently said nothing beyond confirming their name and address, with subsequent conversations taking place exclusively between court professionals. As one child commented: '*I don't think I could even slip a word in edgewise*' (Hunter et al, 2020: 20). Professionals often failed to appreciate the extent of the social, cultural and age gulf between them and the child defendants. This lack of appreciation meant that anxious or uncomfortable behaviour on the part of the child might be misinterpreted as insolence or disinterest. As youth court sittings become more infrequent, and magistrates spend proportionately more time in the adult criminal court, their specialist skills become increasingly diluted, increasing the risk that engagement and participation become increasingly tokenistic.

There has been some progress in terms of specialist legal representation for children in the justice system. But it is evident that there was considerable scope for improvement. Echoing earlier criticisms by Lord Carlile (2014), and the Centre for Social Justice (2012), of the standard of representation available to children, a review commissioned by the Bar Standards Board found that, despite a patent need for child specific skills, 60% of advocates interviewed had not received specialist training; a further 11% could not recall whether or not they had had such training (Wigzell et al, 2015). Youth court advocacy was relatively unpopular: one third of respondents had little interest in continuing to undertake such work, largely because it attracted low status and reduced levels of remuneration. Moreover, while participants were generally confident in their own ability to represent children in criminal proceedings, they were less complimentary about the standard of services provided by their peers, citing:

- a lack of knowledge about youth specific legislation;
- poor communication skills with children;

- limited preparatory work being undertaken; and
- the youth court being used as a training ground for less experienced, or less capable, lawyers (Wigzell et al, 2015).

In response to such findings, the Bar Standards Board (2017) has published a set of competencies which all barristers practicing in youth proceedings must meet. They include requirements in relation to: specialist legal knowledge; an ability to communicate effectively with children; the capacity to respond to children from disadvantaged backgrounds; and having an understanding of, and an ability to adapt practice to meet the types of vulnerability which children in trouble frequently manifest. Barristers who intend to represent children are required to register that intention with the Board and to declare that they meet the competencies. It is however unclear to what extent this requirement is monitored. In late 2016, the Solicitors Regulatory Authority launched a specialist support package for solicitors working in youth courts, intended to help practitioners reflect on the quality of their practice and deliver a better quality of representation to children. Specialist training was not however made compulsory which is potentially problematic given that solicitors represent the majority of children in trouble. Accordingly, in spite of some promising developments, the quality of representation in the youth court remains ‘patchy’, frequently being delivered by practitioners whose expertise lies with adult criminal proceedings (Hunter et al, 2020: 17).

In his review of youth justice, Charlie Taylor (2016) raised more fundamental questions about the ability of the youth court to deal with the complexity of needs that many children in trouble present. Courts frequently have little understanding of children’s circumstances and magistrates report that they rarely know if the disposals they impose are effective:

*‘There is little scope for the courts actively to manage a child’s sentence and rehabilitation, to reward success or to amend the terms of the sentence where the child is not responding, or to hold agencies to account for providing the necessary support’* (Taylor, 2016: 28).

In this assessment, Taylor was echoing the earlier findings of the Carlile inquiry (Lord Carlile, 2014) which found that the limitations associated with the sentencing framework, focused as it was largely on imposing punishment, made it difficult for courts to address children’s welfare needs. More recent research has reaffirmed that youth courts frequently struggled to attend to children’s best interests. In part this was a consequence of that fact that criminal proceedings are not primarily directed to that end, but the court’s decision-making was also hampered by a lack of engagement by children’s services and other agencies with responsibility for safeguarding. Children in care for example were frequently not accompanied to court by their social worker, reinforcing a perception that where children offend, responsibility was in effect passed to the YOT and the youth justice system. Consequently, as one legal advisor, interviewed for the research, put it: *‘there is not a great deal the court can do – if there are, for example, a lack of placements’* (Hunter et al, 2020: 26).

As noted in the first chapter of this report, Taylor proposed the replacement, for most purposes, of the youth court by a system of Children’s Panels, a recommendation that is not being pursued by the government. The NAYJ shares Taylor’s reservations about the youth court as a suitable venue for children and doubts whether it can, in its current configuration, provide a child friendly, let alone *child first*, form of justice for children.



## ● Sentencing principles or principled sentencing?

In the event that a child is convicted, the NAYJ believes that sentences imposed by the court, or delivered by youth justice agencies, should be governed by the principle of minimum necessary intervention. The level of compulsory restriction on the child should be proportionate to the seriousness of the offending behaviour rather than reflecting assessed risk and what the child might (or might not) do in future. Supervisory processes and the content of any order should be directed to maximising the child's long-term potential and wellbeing rather than confined to the restrictive, and overtly negative, ambition of attempting to avoid particular forms of future illegal behaviour in the short-term. All court-ordered interventions should have the best interests of the child as a primary focus and conform to a children's rights perspective. In summary, the duration and intensity of intervention should be informed by principles of youth justice, while work undertaken with children should be underpinned by principles of social justice.

It might be objected that an adherence to minimal intervention exposes vulnerable children to insufficient support if their offending is relatively minor. This is, however, to misunderstand the philosophical and empirical basis of such an approach, which is to minimise over-intrusive *compulsory* intervention as a response to offending behaviour. However well-meaning, and notwithstanding that they may be focused on addressing need, court-ordered interventions will inevitably be experienced by the child as punitive because they involve a restriction on liberty which has been imposed as a consequence of prosecution for offending. Since they are delivered by criminal justice practitioners, within an offence focused system, they are unavoidably stigmatising and likely to have a counterproductive labelling effect.

Engagement with supervision, and the prospects of improved outcomes, is accordingly predicated on the child regarding the disposal, and the process by which it was arrived at, as fair. This observation is simply a more specific instance of the more general, well-evidenced, proposition, associated with the concepts of 'procedural justice' (Tyler, 2003), that individuals' perceptions of the legitimacy, and willingness to comply with, the exercise of authority, are '*closely tied to the fairness of how they were treated.... It is not enough to be fair; citizens must perceive that the process is fair*' (Gold Lagratta and Bowen, 2014: 2).

Disproportionate levels of intervention – lengthy or intensive sentences that are not warranted by the child's behaviour – are likely to be regarded as unfair and will, as a consequence, be ineffective for that reason. Where children require ongoing support beyond that which can be provided within the confines of a legitimate response to their offending, that support should – as a matter of rights and in order to maximise the prospects of effectiveness – be provided outside of the criminal justice system or, where a lack of resources preclude that option, on a voluntary basis with the child as co-creator of the work undertaken with them.

The sentencing framework for children has developed piecemeal and combines an amalgam of, potentially incompatible, principles that should inform the court's decision-making. These include:

- the seriousness of the offence, taking into account aggravation, mitigation and previous offending;
- the welfare of the child; and, potentially most problematically,
- preventing offending and reoffending, the principal aim of the youth justice system, introduced by the Crime and Disorder Act 1998 (Nacro, 2003b; Sentencing Council, 2017a).



No doubt this array of competing considerations, the potential to interpret them in a variety of ways, and to accord them different weight, contribute to the phenomenon of *'justice by geography'*, whereby outcomes for offending of a similar nature diverge significantly between areas (see for instance, Nacro, 2000). The NAYJ considers that, in practice, any tensions between these principles are frequently resolved through a primary focus on punishment which takes precedence in particular over the child's welfare. The principal aim of preventing offending lends itself to various interpretations of which forms of intervention are effective in reducing youth crime, including, for instance, tough, punitive, sentencing or attending to the child's wellbeing.

Although not enshrined in domestic legislation, there is also a requirement on courts to take account of obligations under international children's rights instruments, and in particular, the UN Convention on the Rights of the Child. While these obligations have the potential to mitigate punitive sentiments, too often, they receive little attention (Rosa et al, 2019).

In 2017, the Sentencing Council (2017a) published revised guidance on the overarching principles for sentencing children and while the constraints of existing statutory arrangements inevitably limit the extent to which the guidelines mandate a child-friendly response, it nonetheless constitutes a significant advance over the previous edition published in 2009. The newer document embraces a shift in terminology, referring consistently to *'children'* and *'young people'* as opposed to *'youth'* and *'young offenders'*. Significantly, this change was made as a consequence of consultation, with the Howard League making particularly forceful representations on the issue: the draft guideline continued to use the old linguistic formulations (Sentencing Council, 2017b). While such amendments are largely symbolic, the NAYJ considers that revised terminology has the potential to send a powerful message that children should be treated differently to adult offenders and should be understood as *'children first'*; the fact that the expression *'offender'* was used liberally in the draft suggests that the importance of language only became apparent to the Sentencing Council with prompting.

The document also contains considerable elaboration of the factors which the court should consider regarding the child's welfare. Other welcome changes include acknowledgement that:

- The unnecessary criminalisation of children should be avoided
- A child's lack of maturity might reduce their culpability and this should be reflected in a reduced severity of sentencing
- Children should be given an opportunity to learn from their mistakes
- Offending by children is often transitory and sentencing *'should not result in the alienation of the child or young person from society if that can be avoided'* (Sentencing Council, 2017a: 5)
- The impact of punishment will be experienced more heavily by children in comparison to adults and sentences will appear longer as a consequence of age
- BAME children are over-represented in the justice system and may have previous experience of discrimination, and adverse treatment, by authorities, *and*
- Due weight should be given to the impact of care, or leaving care, status, on children's offending behaviour and the potentially differential impact of any sentence imposed.

Despite such improvements, the guidelines retain a number of problematic aspects. Disappointingly, the document continues to allow that deterrence might legitimately influence sentencing, in spite of considerable evidence that children rarely consider the consequences of their behaviour prior to engaging in offending. The notion of deterrence relies on a rational choice model of offending behaviour and is, accordingly highly unlikely to have a positive impact on teenage risk taking behaviour (see for instance, Ross et al, 2011; Nagin, 2013; Gray, 2013; Motz et al, 2020). Even if deterrent sentencing could be demonstrated to reduce future offending, it would hardly be a hallmark of a *child first* model of responding to youth crime.

The guidance provided on how to apply the aim of preventing offending is not particularly enlightening; courts are simply advised that they should ensure that '*any sentence imposed is an effective disposal*', thereby leaving it to the judiciary to determine what may, or may not be, effective in this regard (Sentencing Council, 2017a). This is potentially problematic given Taylor's (2016) finding that magistrates have limited knowledge of the impact of different disposals and struggle, in any event, to address the range of vulnerabilities which many of the children manifest. Moreover, there may be considerable differences in what interventions are deemed effective according to whether a short or longer-term view is adopted. A draconian curfew might restrict the child's opportunities to offend for the period of the order but may have negative, unintended, consequences when considered from a longer-term perspective.

The NAYJ also has substantial reservations about the inclusion of offence-specific guidelines for robbery and sexual offences, which it considers have the potential to undermine individualist sentencing of children, a pre-requisite of ensuring that their wellbeing is adequately attended to. The guidelines also replicate elements of the scaled approach, now abandoned by the Youth Justice Board, thereby endorsing the principle that the intensity of intervention should be linked to the risk of reoffending, even though the architects of that framework now recognise that it is not compatible with a child first ethos.

Sentencing guidelines are mandatory and courts must take account of them unless they consider that it would be contrary to the interests of justice to do so (Sentencing Council, 2017a). Given the relatively short period in which the revised guidance has been in force, it is too early to establish what impact it may have had on sentencing practice. Data cited earlier in the report, however, suggest that the potentially helpful references to BAME children and to care status have not been sufficient to effect a reduction in disproportionality.

## ● Showing conviction

The referral order was implemented on a national basis from April 2002 as a mandatory disposal where a child appears in court for a first offence and pleads guilty, unless the court imposes an absolute discharge, a hospital order or imprisonment. As a consequence of the near automatic requirement to impose it in a large number of cases, the disposal rapidly established itself as the most frequently used sentencing option. From April 2009, the referral order became available for a second offence if the child had not been sentenced to one at first conviction; legislative change in the same year allowed the imposition of a second order in particular circumstances. LASPO continued this process of lifting the restrictions on the referral order; it remains the primary disposal for a first conviction but the court may now also impose such an order irrespective of antecedent history or the number of previous referral orders, providing the child pleads guilty to at least one offence (Hart, 2012).

Mirroring this progressive loosening of the statutory criteria, the use of the penalty has expanded over time: in the year ending March 2019, 19,316 children were made subject to a

referral order, accounting for 43% of all court disposals, and representing a twelve percentage point rise since 2006 (Ministry of Justice/Youth Justice Board, 2020a). The impact of LASPO, which expanded considerably the range of cases where a referral order could be made, is clearly evident in Figure 17 which shows a sharp rise in the proportionate use of the disposal in the two years from 2013. The upward trend has continued in the subsequent period but at a much slower rate.

The referral order has inevitably displaced a range of other disposals. This is particularly true for (some) penalties below the community sentence threshold. Between 2004 and 2019, the use of the reparation order reduced from 3.2% of all disposals to less than half of one per cent. By contrast the use of discharges (absolute and conditional – the figures no longer distinguish between the two disposals) has remained relatively constant, at around 15%. An amendment in LASPO allowed courts to impose a conditional discharge as an alternative to a referral order for a first offence where they consider it appropriate to do so. (Courts were already able to make an absolute discharge in such circumstances.) However, and in the view of the NAYJ, disappointingly, this legislative change does not appear to have led to any increase in the use of this option, despite the fact that many children appearing in court for the first time, are, as noted above, prosecuted without having first benefited from a caution.

**Figure 17**

**Referral orders as a percentage of all sentences imposed on children (summary and indictable offences): 2006 to 2019**

Derived from Ministry of Justice/Youth Justice Board, 2020a: supplementary table 5.3



The most significant displacement effect, in terms of overall numbers, has been in the use of financial penalties which declined, between 2004 and 2019, from 16% of all disposals to 8.2% (Ministry of Justice/Youth Justice Board, 2020a). The NAYJ welcomes this reduction because it views fines as inappropriate for children (or their parents) who overwhelmingly suffer from severe economic hardship. Nevertheless, to the extent that such penalties are being replaced by referral orders which involve a minimum of three months and up to 12 months intervention, it is concerning that children may, as a result, be subject to higher levels of intervention than hitherto.

This concern is heightened by the nature of guidance, and practice, that underpin the referral order. The effect of the order is that the case is 'referred' to a youth offender panel whose role is to provide a forum, away from the formality of the court arena, in which panel members negotiate a contract with the child that takes into account the nature and circumstances of the

offending, the impact upon, and the views, of the victim, and the child's background and needs. The panel is constituted by two volunteers from the community and a representative of the YOT in an advisory capacity. The process is accordingly intended to be informal, restorative and participatory, with the role of the court limited to determining the length of the order. The underlying principles are designed to distinguish the referral order from other court disposals (Crawford and Newburn, 2003). No doubt this potential to provide a different model of responding to children's lawbreaking goes some way to explaining the order's popularity.

Despite this promise, findings from research into the operation of referral orders sound a note of caution. Newbury (2011a; 2011b), for instance, found that victims rarely attended panel meetings, that younger children in particular struggled to participate effectively and could not be considered to have meaningfully agreed a contract, and that older children frequently felt compelled to engage in restorative processes against their will. A thematic inspection, published in 2016, similarly found that referral orders often did not operate as originally intended in that: *'some of the objectives had been lost sight of'* (HM Inspectorate of Probation, 2016: 5). Criticisms included:

- The quality of engagement between panels and children was variable;
- The contract was frequently pre-determined rather than the outcome of a genuine process of negotiation and co-construction;
- The content of intervention was typically offence-focused rather than *'tailored efforts to understand what may help the young person avoid offending in future and be reintegrated into the community'* (HM Inspectorate of Probation, 2016: 5);
- Support with education and lifestyle changes was given insufficient attention; and
- Plans were frequently not meaningful to the child (HM Inspectorate of Probation, 2016).

The inspectors also observed considerable tensions between community volunteers and the YOT which were largely associated with the former feeling that they were *'disempowered'* since their function was largely to *'rubber stamp... what had been proposed to them'* by YOT case managers. Youth offending practitioners conversely tended to see the referral order in similar terms to other sentences of the court, and underestimated the potentially positive role of engagement between the child and panel members in promoting desistance. In some instances, this amounted to an:

*'attitude to the panel and the contract [that] was one of professional arrogance and disrespect'* (HM Inspectorate of Probation, 2016: 23).

The inspection was also critical of government guidance which it suggested was in tension with the spirit of the referral order by providing considerable detail about the elements of the contract, thereby constraining the freedom of the panel to determine what was in the best interests of the child and to respond to child's wishes, interests and aspirations. Guidance has been revised in the interim period and the latest iteration does confirm that contracts should be negotiated with children rather than imposed upon them and that principles of co-production should apply. Yet the same document also continues to mandate that contracts should have two core elements: reparation to the victim or the community and a programme of interventions delivered or organised by the YOT. In relation to the former, while acknowledging that the final decision lies ultimately with the panel, the guidance proceeds to detail the hours of reparation that:

*‘Youth offender panels might normally expect to include in contracts for orders of different lengths as set by the court’ (Ministry of Justice/Youth Justice Board, 2018b: 42).*

These expectations are reproduced in Table 15. The guidance also lists interventions that might be included in the contract, including: offending behaviour programmes, anger management, victim awareness, weapons awareness, curfew and attendance at an attendance centre as well as a number of more positive options. It is perhaps not surprising that some panel members consider that their role is to ratify pre-determined decisions and that children often do not consider that they have a genuine part in negotiating the contract. In spite of the Board’s endorsement of minimum intervention and *child first* models of intervention in National Standards, case management guidance published May 2019 on referral orders simply reminds practitioners of the relevant timescales and outlines their responsibilities to: implement the contract, encourage the child to comply, and *‘take enforcement action in the case of any non-compliance’* (Youth Justice Board, 2019e). For further details, readers are referred to the 2018 guidance. As noted earlier in the report, the Board is in the process of reviewing case management guidance, but in the interim period, the co-existence of a commitment to *child first* principles and practice guidance which is patently not compatible with those principles is deeply problematic.

**Table 15**

**Expected hours of reparation in a youth offender contract by length of order**

Reproduced from Ministry of Justice/Youth Justice Board, 2018b: 42

Length of order	Expected amount of reparation
3-4 months	3-9 hours
5- 7 months	10-19 hours
8-9 months	20-29 hours

The referral order and other sentencing options referred to in the above paragraphs are sometimes known as *‘first tier disposals’* since they can be imposed without the seriousness of the offence having to meet a statutory threshold. Community sentences, by contrast, can only be made where the offending is deemed by the court as being *‘serious enough’* to warrant that level of intervention.<sup>24</sup> The Criminal Justice and Immigration Act 2008 replaced, for offences committed after 30 November 2009, the existing range of community sentences by a single disposal, the youth rehabilitation order (YRO), which allows the court, in principle at least, to select from a menu of 18 different requirements. Despite what was ostensibly, a significant change, most of the conditions of the YRO were already available through existing disposals, many of which could be combined, in various permutations. The change was arguably therefore one of terminology rather than substance (Nacro, 2010).

In any event, the YRO appears to have been used less frequently than previous community sentences but this largely a consequence of the growth in the use of the referral order. In 2019, 4,360 YROs were imposed, accounting for 23% of all disposals compared with an equivalent figure of 30% in the year ending March 2009 (Ministry of Justice / Youth Justice Board, 2020a).

By far the most common requirement attached to a YRO in the year ending 2019 was supervision, accounting for almost one third of all conditions imposed. This pattern suggests that, to a significant degree, the YRO acts as a functional equivalent of the supervision order,

<sup>24</sup> Section 148 of the Criminal Justice Act 2003

one of the community sentences which it replaced. Activity requirements and programme requirements accounted, in combination, for a further 27% of the total made. More worryingly, the third most frequent type of requirement was electronic monitoring (14% of the total); and it is clear that the large majority of these were linked to a curfew, since curfew requirements accounted for a similar proportion (13% of the total). During the year, 1,478 children were required to remain at home between particular hours through this mechanism (Ministry of Justice/Youth Justice Board, 2018b).

The NAYJ views with disquiet such an extensive use of orders that require children to stay at their place of residence, enforced through electronic tagging. While curfews may have legitimate uses, their primary purpose is more commonly *'for the unambiguous purpose of punishment'* rather than ensuring the child's wellbeing or as an integrated part of sentence planning (HM Inspectorate of Probation, 2012: 5). More disturbingly, curfews may operate contrary to the child's best interests where being within the home environment for an extended period, without the option to leave, generates safeguarding concerns. Curfews have the potential to cause particular difficulties for looked-after children placed in residential children's homes out of their home area, many of whom already feel compelled to go 'missing' rather than remain in accommodation which does not suit their needs (Day et al, 2020). Such problems are exacerbated by the potential length of curfews. LASPO extended the maximum duration of a curfew requirement from six to 12 months and raised the maximum daily curfew period from 12 to 16 hours (Hart, 2012). Published data provide no indication of the extent to which these maxima are used or the impact of such restrictions on children. The available statistics are however sufficient to highlight the considerable punitive undertones that continue to pervade the sentencing of children.

Requirements other than supervision, activities, programmes and curfews, are used infrequently. As shown in Table 16, seven requirements each constituted less than 1% of the total number made. The low use of mental health treatment requirements (imposed on just 12 children in 2019) is likely to be explained by the high statutory threshold for imposing such a condition, which includes the court having access to a psychiatric report on the basis of which it is satisfied that the mental condition of the child is such as requires, and may be susceptible to, treatment and that arrangements have been, or can be, made for the proposed treatment. At the same time, given the extensive evidence of the prevalence of mental ill health in the youth justice cohort, such a low take up might be considered disappointing, reflecting an inadequate provision for child and adolescent mental health. The most recent UN Committee on the Rights of the Child's (2016) report on the UK's compliance with the Convention pointed to a need to *'rigorously invest in child and adolescent mental health services'*. This assessment is confirmed within a youth justice context by a study of mental health provision available to youth offending teams, which concluded that there was:

*'widespread evidence of the inadequacy of existing resources to address the full extent of the health needs of these young people. An important opportunity is clearly being missed to reduce future health and criminal justice costs through prevention and early identification and intervention with this high risk group. We also found evidence that health practitioners are mostly only accessing young people at a very late stage in the youth justice pathway, with little or no capacity for preventive work'* (Khan and Wilson, 2015).

**Table 16**

**Distribution of YRO requirements: 2019**

Derived from Ministry of Justice / Youth Justice Board, 2020a: supplementary table 5.7

Type of requirement	Number of requirements made	Proportion of total requirements
Supervision	3,655	32%
Activity	2,138	19%
Electronic Monitoring	1,556	14%
Curfew	1,478	13%
Programme	930	8%
Unpaid Work	434	4%
Prohibited Activity	418	4%
Attendance Centre	330	3%
Exclusion	290	3%
Education	108	<1%
Residence	74	<1%
Local Authority Residence	54	<0%
Drug Treatment	24	<0%
Drug Testing	13	<0%
Mental Health Treatment	12	<0%
Intoxicating Substance Treatment	11	<0%
Total	11,525	100%

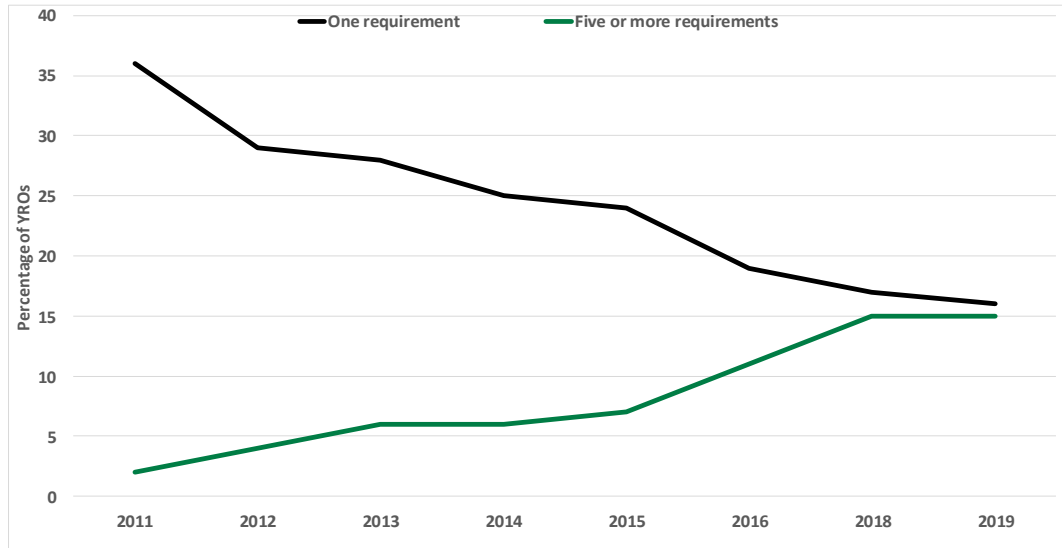
A further area for disquiet is that the intensity of YRO intervention is increasing. In the year ending, 2019, 15% of such orders had five or more requirements attached (Ministry of Justice / Youth Justice Board, 2020a: supplementary table 5.7). This represents a considerable rise over the period since the YRO was introduced. As shown in Figure 18, in 2011 (the first year for which data are available), just 2% of orders contained five or more requirements. There has been a corresponding decline in the proportion of orders with a single requirement, from 36% to 16%. While this pattern might reflect the use of more intensive community sentencing as an alternative to imprisonment, it also signals community disposals becoming considerably more intrusive. Certainly the data would appear to show that principles of minimum intervention have not been a priority during this period.



**Figure 18**

**Percentage of YROs with a single requirement and with five or more requirements: 2011 – 2019 (Information for 2017 is not available)**

Derived from Ministry of Justice/Youth Justice Board, 2020a and previous editions of Youth Justice Statistics



## Chapter 8

# Prison blues

### ● Custodial trends

The UN Convention on the Rights of the Child requires that child imprisonment should be used as ‘a measure of last resort and for the shortest appropriate period of time’ (United Nations, 1989: Article 37b). The NAYJ considers that depriving children of their liberty can only be justified in the small number of cases where they pose an immediate risk of serious harm that cannot be managed in the community. Incarceration of children is inherently harmful because, as the *End Child Imprisonment* (2019: 3) campaign has argued:

*‘It is injurious to their normal healthy development. It takes them away from their parents and carers, families and communities and, if in school, can be seriously disruptive to their education. As an experience that touches a very small number of children, the vast majority of whom come from already marginalised communities, it carries a social stigma and risks the child being labelled for many years to come. It prevents regular childhood behaviour such as self-directed play and recreation and relationship-forming, and interrupts the ordinary developmental process of ‘growing up’.’*

Until the punitive turn, described earlier in the report, had run its course, levels of child custody within England and Wales were extremely high by comparison with other Western European jurisdictions (see for instance, Muncie, 2015). As shown in figure 19, the imposition of custodial sentences rose sharply throughout the 1990s as the punitivism of that decade took hold and the consequences of New Labour’s Crime and Disorder Act 1998 were played out. While the use of such sentences plateaued in the early years of the new century, the heightened incarceration of children continued to attract criticism from the UN Committee on the Rights of the Child (2008) as recently as 2008.

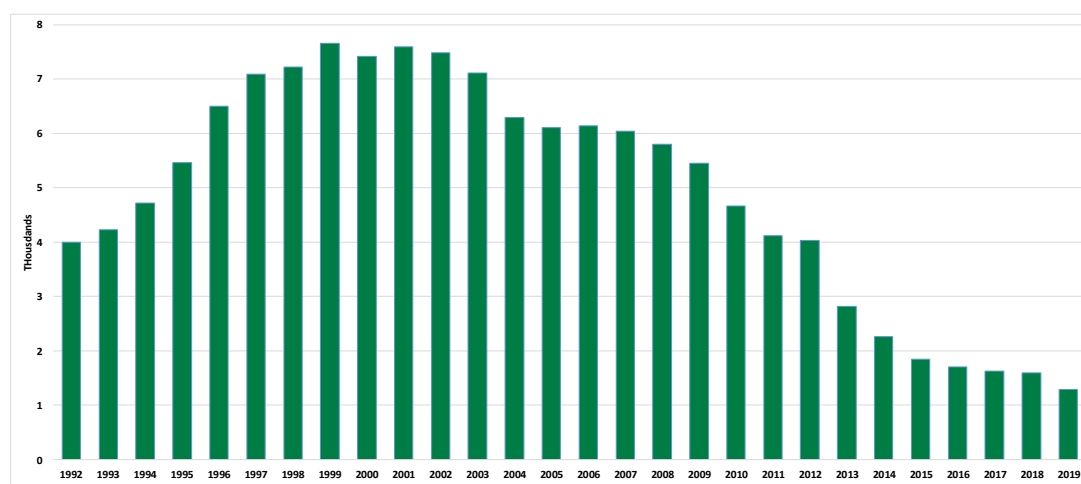
Over the past decade, the numbers deprived of their liberty through the youth justice system have fallen sharply, ensuring that the treatment of children in conflict with the law has become more closely aligned with international obligations although, as outlined below, it is evident that custody is still not always used as a last resort (Standing Committee for Youth Justice, 2020). Reducing the number of children in custody was one of the three high-level targets, established by the coalition (Conservative and Liberal Democrat) government in 2010, by which youth justice performance was to be measured. (The other two were reducing FTEs and reducing reoffending.) All three targets were retained by the Conservative administration elected in 2015 but appear to have been quietly shelved in the period since. Performance against the measures has not appeared in Youth Justice Statistics since 2016/17. The adoption of the target to reduce custody was an important indicator of a shift in political tone, but at the point of its introduction, child imprisonment was already declining. As demonstrated in Figure 19, custodial sentences began to tail off from 2002, but the contraction accelerated rapidly, after a short period of stability, from 2008 onwards, coinciding with the establishment of the FTE target - and the onset of financial recession (Ministry of Justice / Youth Justice Board, 2020a). The shrinkage in the youth court population, and an increasing recognition of the ineffectiveness of youth imprisonment by policy makers, accordingly combined to reduce radically the number of children imprisoned.

In the year ending March 2019, 1,287 children were sentenced to detention, representing a fall of 19% by comparison with the previous 12 months and an 83% reduction from the highpoint (7,653 custodial sentences) in 1999. The rate of decline has however slowed noticeably over the most recent five years, as might be anticipated when numbers become lower (Ministry of Justice / Youth Justice Board, 2020a).

**Figure 19**

**Number of custodial sentences imposed on children: 1992-2019**

Derived from Ministry of Justice / Youth Justice Board, 2020a and earlier editions of Youth Justice Statistics and Criminal Statistics



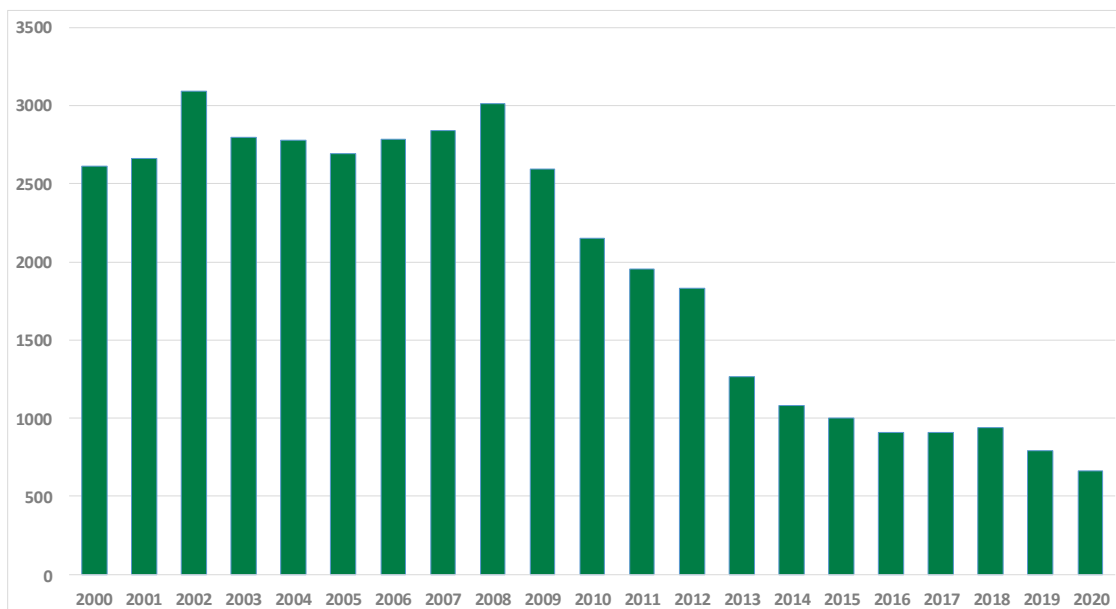
The largest reductions have, unsurprisingly, been for shorter (up to two years) sentences, in the form of the detention and training order (DTO), the only custodial disposal available in the youth court which accounts for the large bulk of sentences of imprisonment imposed on children. But the use of longer-term detention (penalties of more than two years) has also fallen. Between 2009 and 2019, for instance, there was an 80% decline in the use of DTOs compared with a 39% fall in orders under sections 90 and 91 of the Powers of Criminal Courts (Sentencing) Act 2000 (for children convicted of murder and other grave crimes respectively). The number of sentences imposed on children deemed to be ‘*dangerous*’ (because they pose ‘*a significant risk to members of the public of serious harm*’) have also shown a marked decrease: 100 such sentences were imposed in 2009 but just 12 in 2019. Part, but not all, of this reduction is due to the abolition of detention for public protection (an indefinite sentence under which release of the child was at the discretion of the Parole Board) in 2012 by LASPO. From that year onwards, extended sentences (involving a determinate term of at least four years imprisonment followed by an extended period on licence) have been the only disposal available for children considered dangerous. One artefact of the faster decline in shorter sentences is that the average length of custodial sentences imposed has risen, from 11.4 months in 2009 to 17.7 months in 2019 (Ministry of Justice / Youth Justice Board, 2020a: supplementary table 5.3).

The reduction in custodial sentences imposed on children was not immediately mirrored in an equivalent contraction in the number of children held in the secure estate at any one time. As Figure 20 illustrates, the population of incarcerated children continued to grow until 2008. This was largely a function of sustained rises in the use of custodial remands for a period of time after the onset of the decline in sentencing (Ministry of Justice / Youth Justice Board, 2020a).

**Figure 20**

**Average under-18 population of the secure estate for children and young people: 2000-2020 (April each year)**

Derived from Youth Custody Service, 2020



**Figure 21**

**Average under-18 remand population in the secure estate: 2004 to 2019**

Derived from Ministry of Justice/Youth Justice Board, 2020a

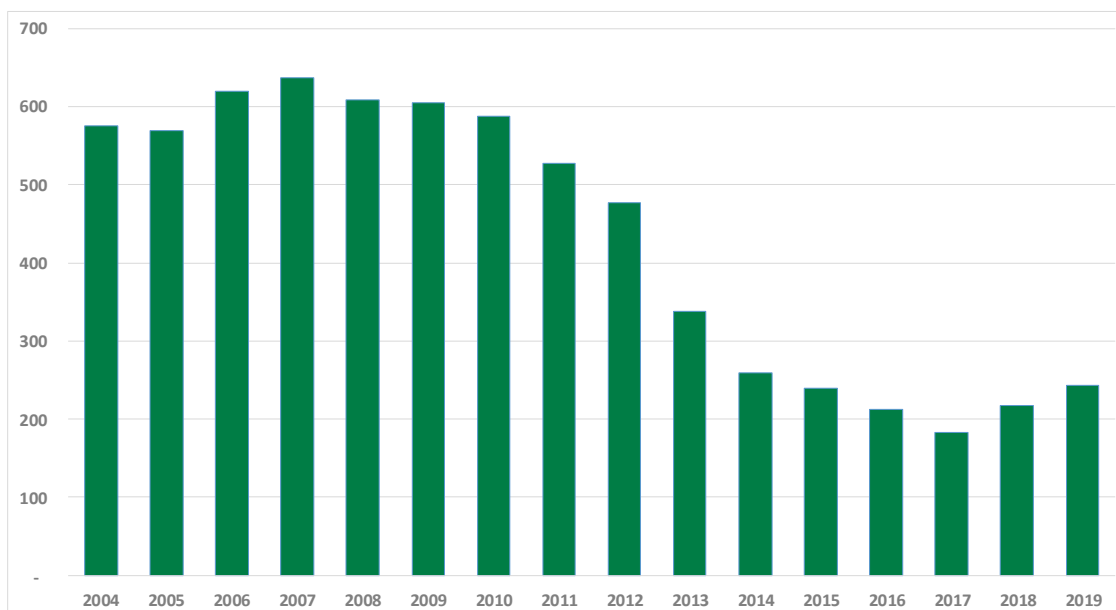


Figure 21 shows that the average population of children detained on remand continued to rise until 2007 and has, thereafter, tended to decline at a slower rate than custodial sentences. There has been a further worrying growth, of around one third, in the number of children remanded to the secure estate over the past two years. As a consequence the proportion of all

children in the secure estate subject to remand has risen over that period from 21% to 28% (Ministry of Justice / Youth Justice Board, 2020a: supplementary table 6.3).

A number of related, and interlocking, factors appear to have contributed to the fall in the use of child imprisonment (Allen, 2011). Legislative changes have constrained courts' decision-making powers. In respect of sentencing, the Criminal Justice and Immigration Act 2008 (Schedule 4, part 1, 80(3)) imposed a new duty that requires a court, where it imposes a custodial sentence on a child, to make a statement that:

*'It is of the opinion that a sentence consisting of or including a youth rehabilitation order with intensive supervision and surveillance or fostering cannot be justified for the offence'.*

The court must also indicate why it is of that opinion that neither of these alternatives to custody is appropriate.

In relation to remands, there have been two relevant statutory modifications. A provision in LASPO, implemented from December 2012, tightened the criteria that had to be satisfied for a remand to the secure estate and applied these criteria, for the first time, to 17-year-olds, a group who had previously been treated as adults for remand purposes (Hart, 2012). The changes also made available non-secure remands to local authority accommodation to 17-year-olds, providing courts with a potential alternative to incarceration for this age group when they were denied bail.

From April 2013, remand budgets were devolved to local authorities who became liable to pay the costs of placing children remanded to the secure estate. The explicit purpose of this latter change was to remove any perverse financial incentives associated with custodial remands that followed from fact that local authorities were responsible for costs of pre-trial community provision for children but not those for children remanded to youth detention accommodation (Ministry of Justice/ Youth Justice Board, 2013b).

While each of these measures might have reinforced a downward trajectory, it is clear that they did not trigger it since custodial sentences and the remand population had both already declined considerably in advance of implementation. Perhaps more significant, is the context in which these statutory provisions were introduced. Three points in particular stand out.

- A more tolerant climate to children in trouble was facilitated by the de-politicisation of youth crime and justice, which was, in turn, encouraged by a desire to curb excessive cost.
- The introduction of the FTE target and the promotion of decriminalisation, itself a reflection of that increased tolerance, led to a sharp reduction in court throughput which was also reflected in fewer children being deprived of their liberty.
- Delaying the point at which children entered court system ensured that they were less likely to amass a criminal history that would make custody appear inevitable as a consequence of 'persistent' offending (Bateman, 2012).

It was noted earlier in the report that the reduction in child FTEs has had a delayed, positive, impact on the number of young adults entering the criminal justice system. It also seems likely that the fall in child imprisonment might have had a similarly beneficial influence on the number of young adults in custody: the decline in the number of children deprived of their liberty has on this account had a 'knock on' impact on the older age group. The effect is, of

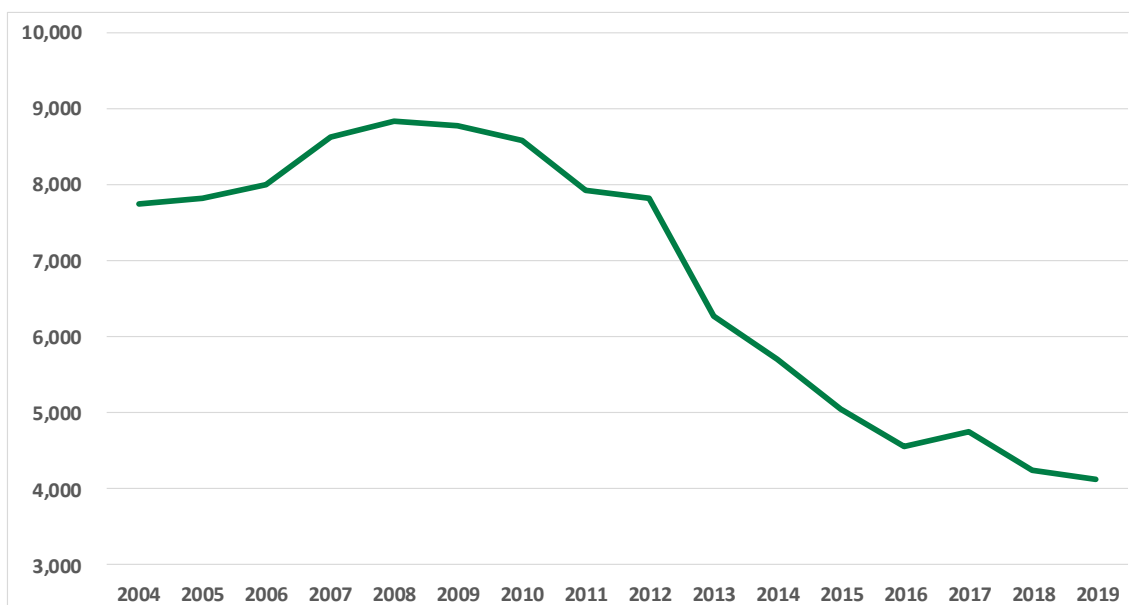
course, an indirect one. The waning incarceration of children reduces the population affected by the negative consequences associated with imprisonment – such as increased recidivism, stigmatisation, and disruption to the natural process of maturation. As this cohort of diverted children makes the transition to adulthood, they are, thereby, less likely to offend at a level that would incur imprisonment.

The data provides some support for such an account. There has been a recent decline in the 18-20 prison population, but significantly, as demonstrated in Figure 22, it commenced later than that for children and was more muted when it came. Between 2008 and 2010, while the number of detained children fell by almost a third, the equivalent reduction for young adults was small in comparison – at less than 3%. There was, however, a pronounced acceleration from 2010 onwards: by 2019, the young adult prison population had contracted by a further 52% (compared to an equivalent fall of 69% for children). The delay of two years is consistent with a ‘filtering through’ process: the large majority of children deprived of their liberty are within the 16 – 18 year old age bracket and would become young adults within such a time frame. The more modest fall for young adults is also what might be expected if the reduction was largely explicable in terms of what was happening to the child population since a proportion of those who receive a custodial disposal over the age of 18 years will not, in any event, have been in trouble as children: the fall in child imprisonment would not, therefore, impact on that group. It is significant too that the pattern shown in Figure 22 cannot be explained simply in terms of wider custodial trends, since the total prison population has continued to rise, albeit slowly, over this period, by around 4%. Trends in relation to youth imprisonment thus have broader ramifications that extend beyond the boundaries of the youth justice system.

**Figure 22**

**Young adult (18-24 years) prison population: June each year**

Derived from Ministry of Justice, 2020d and earlier editions of Offender Management Statistics



Maintaining the considerable progress of the last twelve or so years is contingent on ensuring sustained reductions in the number of children entering the system, and a continued philosophical commitment to keeping children out of custody. Both of these factors are in turn reliant on the endurance of a more tolerant climate to children in trouble with the law.

Embedding a *child first* ethos across the youth justice system may be necessary to buttress such a climate, given the potential threats arising from reductions to YOT budgets and the impact of the increased politicisation of weapons offending, discussed earlier in the report.

The NAYJ naturally celebrates the considerable recent advances that have been made in keeping children out of prison, but the Association continues to believe that child imprisonment in England and Wales remains too high and that the level of incarceration is still not used as a measure of last resort as required by the UN Convention on the Rights of the Child. A further comparison with the 1980s is instructive in this regard. During that earlier decade, not only did the number of children consigned to custodial facilities fall, but so too did the *rate* of imprisonment as a proportion of all convictions (Rutherford, 2002). By contrast, in the present period, the rate of custody has tended to rise. In the year ending March 2008, 6.1% of sentenced children, received a custodial disposal; the equivalent figure in 2019 was 6.7% (Ministry of Justice/Youth Justice Board, 2020a).

While some of the offences leading to the imposition of imprisonment are serious, it is equally clear that many are not at the highest level of gravity. During 2019, for instance: 39 children were incarcerated for common assault; 16 for theft from a shop; nine for handling stolen goods; seven for going equipped to steal; four for possession of cannabis; and two for theft of a pedal cycle. In addition, 24 children were incarcerated for breach of a criminal behaviour order, one of the successors to the ASBO (Ministry of Justice 2020a). It seems likely that, in such cases, it is the persistence of offending, rather than the gravity of the offence itself, which has triggered incarceration. Eliminating the use of imprisonment for persistence would thus have a deflationary impact on the child custodial population.

Evidence remains, too, of substantial (in)justice by geography: children in some parts of England and Wales have a (much) higher likelihood of imprisonment than those in other areas. An indication of the extent of disparities is given in Table 17 [overleaf]: it shows that, in the year ending March 2019, rates of custody (as a percentage of all court disposals) ranged from 18.5% in Kensington and Chelsea to zero in eleven YOT areas (Ministry of Justice/Youth Justice Board, 2020a: local level pivot tables). While the extent and nature of crime varies from one area to another, and percentages can be affected by small overall numbers, it seems implausible that such extreme variation can be explained purely in these terms. The data accordingly suggest that there remains considerable scope for further reductions in child imprisonment by aligning outcomes in areas with a higher use of custody to those where deprivation of liberty is low.

The abandonment of the custody reduction target by the government is regrettable given the potential for further progress in removing children from prison settings, and it may, in the longer-term, serve to divert youth justice agencies attention from the importance of decarceration. This risk is exacerbated by the government's proposal to provide 10,000 new prison places (for adults), a pledge that has recently been reaffirmed as part of a wider building programme designed to combat the recessionary consequences of the Covid 19 pandemic. At least one commentator has pointed to the irony that, while hailed as a response to the economic fallout from coronavirus, additional prison capacity may actually serve as a repository for those worst affected by increased levels of poverty and precarity triggered by the virus (Ford, 2020).



**Table 17**

**Rates of custodial sentences as a percentage of all court disposals by region, showing YOTs with highest and lowest rates of custody in each region: year ending March 2019**

Derived from Ministry of Justice/Youth Justice Board, 2020a: local level pivot tables

Region/ country	Rate of custody for region	YOT with highest rate of custody in the region	Rate of custody	YOT(s) with lowest rate of custody in the region	Rate of custody
<b>East Midlands</b>	6.6	Leicester City	9.5	Derbyshire	2.6
<b>Eastern</b>	6.3	Luton	15.7	Suffolk	2.1
<b>London</b>	8.3	Kensington and Chelsea	18.5	Merton	1.5
<b>North East</b>	4.5	Hartlepool	8.9	South Tyneside / Sunderland	0
<b>North West</b>	7.9	Salford	14.9	Sefton	0.8
<b>South East</b>	5.6	Medway	9.5	West Berkshire / Windsor and Maidenhead/ Wokingham	0
<b>South West</b>	3.4	Plymouth	12.7	North Somerset/ Torbay	0
<b>Wales</b>	4.2	Vale of Glamorgan	15.4	Ceredigion / Cym Taf Pembrokeshire / Powys	0
<b>West Midlands</b>	8.7	Birmingham	14.6	Walsall	2.2
<b>Yorkshire</b>	8.7	Leeds	12.9	Doncaster	1.9
<b>England and Wales</b>	7				

In this context, the *NAYJ* considers that the best assurance of continued progress in driving down levels of detention, and avoiding a resurgence of child imprisonment, is likely to be the introduction of further statutory limitations on the powers of courts to deprive children of their liberty. Such changes are required to ensure that persistent offending, and lawbreaking of a less serious nature, cannot be considered to meet the custody threshold. The UN Committee on the Rights of the Child (2016) has also argued that the principle of detention of

liberty as a last resort should be enshrined within legislation. The NAYJ has previously proposed that there should be a statutory presumption of a community-based response to children's offending, combined with a legal purpose of custody as being necessary for public protection, rather than for purposes of punishment. A recent report by the Standing Committee for Youth Justice (SCYJ) has helpfully outlined what such principles might look like in legislation. Courts should, the report proposes, not be able to impose imprisonment on a child unless:

- 'a) the child is convicted of an offence punishable with life imprisonment; and*
- b) The court is satisfied that the particular circumstances of the offence, or the combination of the offence and one other associated offence, is so serious that a custodial sentence could be justified; and*
- c) The court is satisfied that there is a significant risk of serious harm in the event of the commission by the child of further offences punishable with life imprisonment; and*
- d) The court is satisfied that there is no alternative mechanism for dealing with the risk specified in 1(c) with a community-based sentence, and as such no sentence other than a custodial sentence is adequate to address that risk'* (Standing Committee for Youth Justice, 2020: 13).

A similarly modified threshold is proposed by the SCYJ to place tighter limits on custodial remands for children. Such legislative amendments would preclude the use of imprisonment for less serious, but persistent, offending, and for more serious offending unless the child posed a continuing serious risk to the public. The NAYJ would add that, consistent with that principle, children should be discharged from custody at the point they no longer pose a serious risk (see, for instance, End Child Imprisonment, 2019; Hart, 2017). Were such measures adopted, deprivation of liberty would no longer be a punishment but a genuine last resort. Regulating the discretion of the courts in this manner, might also help to reduce the over-representation of BAME children in prison by increasing consistency in sentencing and limiting the potential adverse consequences of prior accumulated disparities by ensuring that perceived persistence cannot be used to justify incarceration.

Problems with the current legislation in England and Wales are not limited to whether or not custody is an available option. Where children are imprisoned, existing statutory provisions permit terms of incarceration which, in the view of the NAYJ, constitute a clear breach of international obligations, amounting to *'inhuman'* treatment. As observed earlier in the report, where children are tried in the Crown court and convicted of what it deemed a *'grave crime'*, the maximum available sentence becomes the same as that for an adult, up to and including life imprisonment. In cases of murder, a life sentence is mandatory, with the starting point for the minimum term to be served in custody set, by statute, at 12 years (Sentencing Council, 2017<sup>a</sup>).

These provisions have drawn criticism from the UN Committee on the Rights of the Child (2016) in its most recent assessment of the UK's compliance with the Convention but more recently, in a general comment on the child justice system, the Committee has expounded its view in more detail:

- 'Life imprisonment and lengthy sentences, such as consecutive sentencing, are grossly disproportionate and therefore cruel, inhuman or degrading when imposed on a child.... The Committee strongly recommends that States parties abolish all forms of life*

*imprisonment, including indeterminate sentences, for all offences committed by persons who were below the age of 18 at the time of commission of the offence’ (UN Committee on the Rights of the Child, 2019: 13).*

Comparative analysis, undertaken by the *Child Rights International Network* (2015), reveals the extent to which sentencing provisions in England and Wales are out of step with normative practice. Whereas adult sentences are available to children sentenced in the Crown court, other jurisdictions commonly set an upper limit to child custodial sentences which is well below the adult maximum: three years in Uganda, Brazil, Bolivia and Peru; four years in Switzerland; and ten years for most Eastern European countries.

The availability, and mandatory status in the case of murder, of life imprisonment for children, similarly contrasts sharply with the situation in the rest of Europe. Outside of the jurisdictions of the United Kingdom, just two states – France and Cyprus – have legislation that permits life imprisonment of a child. Moreover, in those countries the provisions are rarely used. In 2015, according to *Child Rights International Network* (2015), just two children in France had been sentenced to life in the past quarter of a century and there was no record of any such sanctions having been imposed in Cyprus. The contrast with England and Wales could not be starker. During 2019, 66 children received a determinate sentence of longer than five years imprisonment, of which seven were for more than ten years. In the same year, an additional 27 children were sentenced to life imprisonment (Ministry of Justice, 2020a). The introduction of child specific maxima, and the abolition of life imprisonment for offences committed by persons below the age of 18 years, in line with international standards, would lead to further falls in the child custodial population and might make the option of youth court trial for all children, avoiding appearances in the Crown court, a realistic option.

## ● No estate for children

As noted in chapter 1 of the report, more than three years have elapsed since a government commissioned report concluded that the secure estate for children was not fit for purpose (Wood et al, 2017) and since the government confirmed that young offender institutions (YOIs) and secure training centres (STCs) should be phased out (Ministry of Justice, 2016). As previously discussed, progress against this objective has been extremely limited and there is still no clear timetable for removing children from those establishments. This would be worrying in any circumstances, but given the extraordinarily high levels of vulnerability of children in the secure estate, highlighted in Table 5 above, such delays betray a distinct indifference on the part of the state as to the treatment of some of its most disadvantaged young citizens.

In the interim period, moreover, abundant evidence has emerged to confirm that conditions within those settings, and the experiences of children consigned to them, have become demonstrably worse, from an already egregious baseline. As a recent review commissioned by the Youth Custody Service put it:

*‘safety is considered a key risk among YOIs and STCs due to; size, structures in accountability, less child-centred approach, rising levels of violence, inconsistent application of rules and sanctions, difficulties in recruiting and training staff and poor communication between staff and young people’ (Brooks et al, 2019).*

Further confirmation of that assessment comes from children held in such institutions: in 2018/19, more than one in three children (35%) in YOIs and STCs reported that they had felt unsafe at some point during their stay (Taflan and Jalil, 2020). This subjective experience

reflects, in turn, an underlying objective reality as the custodial estate has become an increasingly volatile and violent environment in recent years. As shown in Table 18, the use of restraint, levels of assault, the prevalence of self-harm and episodes of single separation, relative to the numbers of children incarcerated, have each shown alarming rises over the past seven years (Ministry of Justice / Youth Justice Board, 2020a). The figures moreover understate the extent of deterioration for YOIs and STCs, since there have been reductions in the relative prevalence of restraints and assaults in secure children's homes (SCHs) over the period shown.

**Table 18**

**Episodes of physical restraint, assault, self-harm and single separation in the children's secure estate, per 100 children in custody, per month: 2012-2019**

Derived from Ministry of Justice/Youth Justice Board, 2020a, tables 8.4, 8.9, 8.14 and 8.20

Year	Number of episodes per 100 children			
	Physical restraint	Assaults <sup>25</sup>	Self-harm	Separation
2012	25.1	22.1	5.1	54.7
2013	23.8	20.0	5.2	42.7
2014	28.4	21.2	6.6	39.0
2015	28.2	26.6	7.7	34.5
2016	27.8	29.0	8.9	52.3
2017	32.1	46.8	9.0	93.9
2018	37.9	58.0	12.5	94.9
2019	46.6	62.9	13.7	88.5

Charlie Taylor (2020) in a recently published review on pain inducing restraint, conducted for the government, confirmed that longstanding concerns about the capacity of YOIs and STCs to look after children safely were justified:

*'There is an unacceptable level of violence in YOI and STC [sic] meaning that both staff and children are under a high degree of stress. This feeds the cycle in which children, who may already have a tendency towards violence, become more violent leading to greater levels of stress and hypervigilance that create the wrong environment for children to change and flourish.*

*Many of the children have led traumatic lives and have been subjected to abuse ... a high percentage have themselves been victims of crime. This is compounded by putting them in, what can be, a frightening and dangerous environment in which they can find themselves assaulted by their peers and physically restrained. This is made worse when adults deliberately inflict pain in circumstances in which it cannot be justified' (Taylor, 2020: 18).*

The final sentence in the above quotation is a reference to the fact that various forms of pain inducement are currently permitted by the behaviour management regime in YOIs and SCTs (but not SCHs). As Taylor acknowledges, this practice has drawn widespread criticism including from the UN Committee on the Rights of the Child, the Joint Committee on Human Rights and the Independent Inquiry into Child Sexual Abuse (IICSA). The latter has noted that the

<sup>25</sup> The figures for assaults relate to secure training centres and secure children's homes only. Assaults in those two settings are recorded using different counting rules from those that apply in YOIs and the data cannot be meaningfully compared or aggregated.

*'habitually violent atmosphere'* in YOIs and STCs, is worsened by the approach in those establishments to restraint and the Inquiry has characterised the use of pain compliance as *'a form of child abuse [which] must cease'* (Jay et al, 2019: vi).

While undertaking the review, Taylor (2020: 8) observed *'a widespread overuse'* of restraint in STCs and YOIs and found that, in some cases, the decisions of staff escalated situations to the point where the use of force became likely. Conversely, he was *'often impressed'* (Taylor, 2018: 23) by the manner in which staff in SCHs kept restraint to minimum, and where it occurred, acted to end it promptly, even if the child was not fully compliant. While higher staffing levels in the latter type of establishment facilitated better management of challenging behaviour, a different ethos and culture was also crucial to ensuring improved planning of responses to individual children. Such planning was not evident in STCs and YOIs where the use of restraint, and the follow up to it, tended to be formulaic. Taylor also frequently witnessed the use of pain induction in those latter establishments in circumstances where there was no risk of serious harm to staff or other children.

The review recommended that pain inducing techniques should not form part of the Minimising and Managing Physical Restraint programme that governs behaviour management in STCs and YOIs and the recommendation has been accepted by the government (Ministry of Justice, 2020e). Taylor nonetheless accepted that the infliction of pain might continue to be justified to prevent serious physical harm to staff or to another child. This failure to establish an outright ban on the deliberate infliction of pain was labelled, with some justification, disappointing by the Children's Commissioner for England, arguing that the practice had *'no place in the care of children'* (Longfield, 2020), an assessment with which the NAYJ concurs.

Evidence in relation to the impact of the increasing use of separation is provided by a recent thematic inspection of children in YOIs. The inspection found that, too often, children in isolation were *'unable to access the very basics of everyday life, including a daily shower and telephone call. In the worst cases children were left their cells for just 15 minutes a day'* (HM Inspectorate of Prisons, 2020a: 5). In many cases, the experience of children was tantamount to solitary confinement, defined as *'confinement... for 22 hours or more a day without meaningful human contact'* which, in the case of children, is prohibited by international human rights standards (United Nations, 2015: Rule 44). At any one time, around 10% of children detained in YOIs were subject to formal separation and where that happened endured *'unacceptably impoverished regimes'* (HM Inspectorate of Prisons, 2020a: 8); moreover where separation took place on residential wings rather than in dedicated segregation units, it was not always subject to proper management authorisation. Checks were often cursory or did not happen at all, but they served to create an illusion of meaningful reaction with children. While separation should not be used as a punishment, well over half of children (58%) reported that they had been stopped from mixing with their peers for precisely that purpose. The Inspectorate concluded that, while there were occasions where removing children from the standard regime might be unavoidable, the current system for doing so was totally unsuited to meeting children's needs, in part because it was rooted in a model derived from adult prison settings. Inspectors recommended that the current framework for separation should be replaced by a system which ensures that conditions for children in isolation are equivalent to the regime for their non-separated peers.

While welcome, this recommendation is potentially undermined by other findings that children who are not formally subject to separation also frequently spend significant periods in isolation, locked in their cells, without even the minimal safeguards that pertain to formal episodes of separation. The most recent inspection of Cookham Wood YOI, published in

February 2020, found that 28% of children were confined to their cells during the school day. The average time out of cell on weekdays was just five hours, falling to two at the weekends (HM Inspectorate of Prisons, 2020b). Evening association was regularly cancelled. The Chief Inspector of Prisons (2019:38) in his annual report confirmed that Cookham Wood is not exceptional in this regard: *'17% to 20% of children at Feltham, Wetherby and Werrington [YOIs were] locked up during the day, when we would expect them to be taking part in education and activities'*. As a consequence, many children subject to the standard regime in YOIs have limited access to meaningful human contact and other essentials for considerable periods of time.

In YOIs and STCs basic necessities are generally in short supply. In the most recent surveys, conducted during 2018/19, just over one third of children (37%) reported having enough to eat and fewer still rated the quality of food as very or quite good. Less than half considered that the temperature of their room/ cell was comfortable or that the environment was quiet enough to sleep at night (43% and 49% respectively). Despite evidence that many children in custody have poor health, access to health support was poor: 60% of children indicated that it was easy for them to see a nurse, but the proportions for other professionals were substantially lower. As indicated in Table 19, less than half of respondents thought it was easy to access mental health support, just one third of children thought it was easy to see a doctor, falling to one in four for dentists. In YOIs, just 57% of children in YOIs reported being able to have access to a daily shower, an 18 percentage point reduction over the previous year (Taflan and Jalil, 2020).

**Table 19**

**Proportion of children in STCs and YOIs who report it being easy to access health professionals: 2018/19**

Derived from Taflan and Jalil, 2020

Type of health worker	Percentage of children
Nurse	60%
Mental health worker	45%
Doctor	33%
Dentist	25%

The desistance literature has highlighted the importance of high quality relationships between children and staff in achieving better outcomes. Previous research has found that children in custody typically distinguish between staff who they consider care about them, or respect them, and those who do not. Developing trusting relationships with staff who fall into the latter category can be particularly challenging (Day et al, 2020). In this context, it is concerning that less than half (46%) of children in YOIs and STCs felt cared for by most of the staff in the establishment. Only around a third considered that complaints within the establishments were dealt with fairly or promptly. Just over one in four (41%) said that staff had helped prepare them for leaving the establishment and 14% of children said that they were not taking part in any form of education, training or offending behaviour programmes (Taflan and Jalil, 2020).

The experience of custody is also mediated by the characteristics of the imprisoned child. The worsening over-representation of BAME children in the custodial population was described earlier in the report, but is it apparent that such children are also subject to less favourable treatment within the secure estate. As indicated in Table 20, in 2018/19, children from minority ethnic backgrounds were significantly less likely than their white peers to report that



staff care for them or treat them with respect or that their complaints were dealt with fairly. They were also more likely to say that they had been subjected to verbal abuse or threats from staff (Taflan and Jalil, 2020).

**Table 20**

**Responses of children in YOIs and STCs to selected questions: children from BAME backgrounds compared with white children: 2018/19**

Derived from Taflan and Jalil, 2020

Question	BAME children %	White children %
Do you feel cared for by most staff here?	35%	58%
Do most staff here treat you with respect?	63%	74%
Do staff encourage you to attend education, training or work?	62%	74%
Do you think the system of rewards or incentives is fair?	28%	40%
Were your complaints usually dealt with fairly?	28%	47%
Have you experienced verbal abuse from staff?	38%	28%
Have you experienced threats / intimidation from staff?	25%	15%

Children in care, perhaps unsurprisingly, are less able to rely on regular contact with, and visits from, their families than children who are not looked-after; but the former group also tend to be less positive about the support they receive from professionals in the community. Feelings of isolation, reinforced by perceptions that they need to assert themselves to avoid victimisation because of their care status, leads looked-after children to consider that they have to be self-reliant in a way that others do not; this in turn is reflected in the former group being more likely to adopt a combative response to surviving the time in prison, leading to higher levels of restraint and separation (Day et al, 2020). Such findings are reinforced by responses to self-report surveys. In 2018/19, children in care were significantly more likely to indicate that they had been physically assaulted by other children (33% against 21%). They were also more likely to report health (44% against 24%), drugs (30% against 16%) and alcohol (11% against 2%) problems. At the same time, looked-after children were less likely than others to receive weekly visits from friends or family (36% against 55%) and less likely to think that their experience of imprisonment would reduce the chances of future offending (49% against 64%) (Taflan and Jalil, 2020).

The particular needs of girls, as a small minority of the imprisoned child population, are frequently overlooked (Goodfellow, 2019). While evidence is limited, the available data clearly demonstrate that experiences of females in the secure estate for children differ in important respects from those of boys. In 2018/19, girls in STCs were more likely than their male counterparts to report having health and drug problems but considerably less likely to consider that they had received help with their problems while in custody (Taflan and Jalil, 2020). As highlighted above, and shown in Table 21, girls are also considerably more likely to self-harm in custody and to be subject to physical restraint (Ministry of Justice / Youth Justice Board, 2020a). Increased distance from home has been found to be associated with reduced emotional wellbeing, and with greater difficulties in maintaining contact with the outside world; it also impedes effective resettlement support. As noted earlier in the report, girls are, on average, placed considerably further from home than are boys. Almost one in four are detained more than 100 miles from their home communities, a finding that is explicable largely



in terms of the smaller number of secure establishments that are able to accommodate females (Goodfellow, 2019).

Yet, and in spite of the small number of girls incarcerated at any one time – just 28 at April 2020 (Youth Custody Service, 2020), policy discussions on child imprisonment are characterised by a notable lack of gender-sensitive considerations and the absence of any focus on the distinct needs of girls (Goodfellow, 2019). The Safeguarding Review commissioned by the Youth Custody Service recommended, in October 2019, that the Service should develop a ‘strategy for females’ (Brookes et al, 2019: 24) but, at the time of writing, there is no indication that such a strategy will be published in the near future.

**Table 21**

**Episodes of physical restraint and self-harm in the children’s secure estate, per 100 children in custody, per month, by gender: 2019**

Derived from Ministry of Justice / Youth Justice Board, 2020a, tables 8.5 and 8.10

	Number per month, per 100 children	
	Girls	Boys
Physical restraints	103.7	44.7
Episodes of self-harm	72.3	11.8

Perhaps unsurprisingly, such egregious conditions in the secure estate are reflected in poor resettlement outcomes when children are released. It is evident that the prison environment is incapable of undertaking future-orientated work that aims to prepare the child for the transition back into the community. Intervention is typically limited by short-term concerns to deliver what is routinely available within the institution and a focus on managing behaviour, leading to elevated levels of segregation and restraint. The outcomes associated with this failure to provide adequate resettlement support, and the inability to deliver interventions in accordance with the evidence base, have been described as ‘*shocking*’ by HM Inspectorate of Probation (2015: 4). A more recent assessment concluded that:

*‘With some notable exceptions, children were not being prepared to re-enter their communities effectively and start to live productive and safe, law-abiding lives. ... In a particularly damning finding, none of the children to whom we spoke felt that the work that they had done in the YOI had helped them towards doing better on release’* (HM Inspectorate of Probation/ HM Inspectorate of Prisons, 2019: 11).

It is, then, hard to dissent from Goodfellow’s (2018:41 and 42) assessment that youth custody is ‘*in crisis*’, critically undermining the potential to work ‘*towards [children’s] future aspirations upon release*’. All the above findings relate to the experiences of children prior to the advent of the Covid 19 pandemic. While it may be too early to assess the full implications for incarcerated children, a number of consequences of the outbreak are immediately clear. First, there has been a considerable fall in the number of children detained in the secure estate over and above that which would be anticipated given the recent rate of decline. Between February and April 2020, there was a 14% fall in the population of the children’s custodial estate – from 770 to 664. The equivalent reduction in the same period of 2019, was less than 4% (Youth Custody Service, 2020). These figures suggest that courts may be more reluctant to imprison children given the amplified risk to their health and wellbeing as a consequence of responses within the secure estate to managing the virus; although it may also reflect a backlog in court

cases. Separate figures are not available for cases involving child defendants but between March, when the lockdown came into force, and May 17, there was, according to the Independent newspaper a rise of more than 88,000 cases waiting to be heard in magistrates' courts (Dearden, 2020). There may accordingly be an increase in child imprisonment in due course as cases are dealt with.

Perhaps more disturbing are changes to the regimes within custody to accommodate social distancing. The standard prison regime, including that in children's establishments, has been '*paused*' with the effect that '*prisoners can no longer take part in recreational activities*' (Ministry of Justice / HM Prisons and Probation Service, 2020). Education has been severely restricted. An inspection of three YOIs confirmed that in two of them, children's educational activities were limited to worksheets in their cells; the third establishment was able to provide just two hours face-to-face education on school days. Time out of cell varied between the three sites, ranging from three hours a day to just 40 minutes. Contact with the outside world has been circumscribed, with the consequence that children no longer had any face-to-face interaction with families or friends, nor did they receive visits from social workers, YOT staff or lawyers (HM Inspectorate of Prisons, 2020b). The STC rules have also been amended to reduce the minimum amount of time a child must be out of their room in each 24 hour period from 14 hours to just 1.5 hours, providing statutory authorisation for the solitary confinement of children (Great Britain, 2020).

As the Howard League (2020) has pointed out, such constraints on what are already impoverished regimes, inevitably increase the acute strain on extremely vulnerable children. Moreover while lockdown began to ease from mid- May for those in the community, it is apparent that children in custody will continue to be subject to restricted regimes until well into 2021 (Howard League, 2020).

In 2018, six charities, including the NAYJ, launched the *End Child Imprisonment* campaign which has in the interim period garnered support from a wide range of organisations and individuals.<sup>26</sup> The campaign supports the abolition of penal custody for children, specifically STCs and YOIs. It maintains that the few children who need to be in secure provision, because they represent a serious risk to others, should be placed in small settings that prioritise their wellbeing, and are underpinned by a child-care ethos and '*a manifest commitment to children's rights that actively values each child's dignity, worth and potential*' (End Child Imprisonment, 2019: 8). Incarceration in prisons or establishments that exist to make profit should cease forthwith.

From such a perspective, the current configuration of the secure estate, leaves much to be desired. At April 2020, 75% of incarcerated children were detained in YOIs and a further 14% were held in STCs. SCHs by contrast – smaller establishments whose primary ethos is care-based rather than correctional – accommodated just 10% of children deprived of their liberty though the youth justice system (Youth Custody Service, 2020). Any hopes that the decline in the custodial population would provide an opportunity to place a higher proportion of those detained in more child-friendly facilities have been dashed, despite the government's professed commitment to move away from a reliance on YOIs and STCs. The reduction in child imprisonment has instead been accompanied by a sharp contraction in the number in SCH places contracted to the Ministry of Justice, from 225 in 2008 to 100 in 2019, a fall of 56% (Department for Education, 2019b). Occupancy rates for places commissioned by the Youth Custody Service are also lower than for the other two types of custodial provision, despite a

---

<sup>26</sup> The other five charities were: Article 39, the Centre for Crime and Justice Studies, Howard League for Penal Reform, INQUEST and Just for Kids Law

clear consensus that the cohort of children in custody has become increasingly vulnerable. As a consequence, the proportion of children imprisoned in YOIs has actually risen since the government's commitment to abolish those establishments, from 72% in April 2016 to 75% in April 2020 (Youth Custody Service, 2020).

Some of the NAYJ's reservations in respect of the government's putative replacement for YOIs and STCs were rehearsed earlier in the report. It is also worth noting that secure schools as currently envisaged would fail the test of a *child-first* secure facility on other grounds. Research has confirmed that the size of establishment and the staff-to-child ratio (in combination with a care-based ethos) are fundamental to ensuring a child-friendly provision (Bateman, 2016). *End Child Imprisonment* (2019: 7) argues that establishments which provide accommodation for children whose liberty has been restricted must therefore be small:

*'a maximum capacity across the establishment of 30 children, with living units accommodating no more than 8 – 12 children, to ensure that each child is able to develop meaningful relationships with the children they live with and the professionals who care for them'.*

Secure schools, while smaller than most YOIs, will have a capacity of 60-70 places, (Ministry of Justice, 2018), similar to that of STCs, but significantly larger than even the biggest SCH.

It is intended that the new form of provision, as its name implies, should focus on children's education. As Taylor (2016: 40) put it:

*'Rather than seeking to import education into youth prisons, schools must be created for detained children which bring together other essential services, and in which are then overlaid the necessary security arrangements'.*

The NAYJ acknowledges the importance of education to children's healthy development and wellbeing. There is moreover an apparent logic to the emphasis on learning since it is evident that many children, by the time they enter the secure estate, have become estranged from education: in 2017/18, 89% of boys in YOIs reported they that had been excluded and 42% indicated that they were younger than 14 years of age when they last attended school (Green, 2019). However, the Association also notes a sense of *déjà vu*: it should be remembered that the defining characteristic of secure training centres, at their inception, was to provide a focus on education and training for younger children deprived of their liberty (Hagell et al, 2000). The DTO was also an explicit attempt to marry the objectives of incarceration and training, heralded by the Youth Justice Board (2000:1) at the time of its introduction as a '*better sentence*' for that reason. History has recorded the abject failure of those endeavours. This previous experience also highlights the dangers in a rhetoric which conflates imprisonment with education or training: the introduction of the DTO was associated with a spike in custodial sentencing and Goodfellow (2019: 44) has noted the potential for a similar response in relation to secure schools, as courts engage in a '*misguided effort to help troubled children who have disengaged from education*'.

The failure of previous attempts to reform child imprisonment by prioritising learning is not simply a problem of flawed implementation. A concentration on education, particularly if understood in terms of formal schooling, as the model of secure schools appears to assume (albeit that the Ministry of Justice (2018: 2) envisages children engaging with '*integrated care, health and education services*'), falls short of the necessary vision of what provision for children deprived of their liberty should look like.

One difficulty is that many children in custody are so vulnerable and their needs so extensive that high quality care, emotional support, the development of trust, and in some cases, therapeutic interventions are required before they are educationally ready (Hart, 2017). YOIs and STCs have consistently failed spectacularly to deliver such support, and given their proposed size it is not obvious that secure schools would fare any better. Second, there is something of a conceptual problem with mandating formal education as part of the punishment meted out by the court. Children who have already been failed by the educational system in the community, who have, as a consequence, developed a deep antipathy towards formal learning and who understandably resent being deprived of their liberty, are unlikely to respond positively to standard classroom experiences (Little, 2015).

An alternative perspective would require establishments that detain children to be underpinned by a coherent, rights informed, set of values, encompassing:

*‘a childcare-based ethos that seeks to maximise the child’s well-being and healthy development and prepare them for a return to the community at the earliest opportunity’* (End Child Imprisonment, 2019: 8).

A pre-requisite of achieving those ends, is that responses to children in such settings are informed by a ‘theory of change’ that enables staff to develop a clear understanding of how children’s individual needs can be met, their healthy development encouraged and their risks managed constructively (End Child Imprisonment, 2019). As currently represented, the secure school model lacks a fully articulated theory of this sort (Hart, 2017).

In this context, it is instructive to recall that the Taylor acknowledges that:

*‘There will continue to be a need for more specialist provision for the youngest and most vulnerable children remanded or sentenced to custody, as currently provided by SCHs’* (Taylor, 2016: 41).

At no point is the reader told why such specialist provision should not be available for all children deprived of their liberty. This is particularly so given the compelling evidence that children detained on welfare grounds, who are exclusively accommodated in SCHs, share many of the characteristics of those who are imprisoned so that the rationale for separating out children into different forms of provision is *‘unclear and unjust, and not in line with any notion of child-friendly youth justice’* (Andow and Byrne, 2018: 51). One is left to surmise, as Little (2020: 1) has persuasively argued, that *‘cost-per-child place is a dominant driving force’*. The NAYJ considers that, at their best, SCHs have demonstrated that a model based on a child care ethos can provide a safe environment with the potential to minimise the damage of custody while preparing children for a positive future. Relying on secure schools to ameliorate the problems of the existing custodial estate for children, at some - as yet - undetermined future date, is analogous to a *‘reinvention of the wheel’*. Provision of adequate funding to expand, and develop, the SCH sector offers a principled and practical alternative to further fragmentation of custodial provision, that would enable the removal of children from YOIs and STCs forthwith (Bateman, 2016: 12; see also Hart, 2018).

## Chapter 9

# What's counted or what counts? Reoffending as success or failure

Reoffending rates have, for at least a decade, been regarded by central government as the litmus test of youth justice success (Bateman and Wigzell, 2019). A focus on recidivism was given a statutory footing through section 37 of the Crime and Disorder Act which established that the principal aim of the youth justice system was the prevention of offending by children, but it was left to the Coalition government, in 2010, to enshrine reducing reoffending as one of three measures by which the performance of the youth justice system was to be assessed. The target involved progressive reductions in recidivism, as determined by the level of proven reoffending within 12 months of youth justice disposal. As noted in an earlier chapter, none of the three targets appear to have been formally adopted by the current administration, but while it is unclear whether reducing FTEs and the number of children in custody remain priorities, there is no doubt that a preoccupation with reoffending continues to underpin youth justice policy.

As has already been demonstrated, considerable headway has been made against two of the erstwhile targets: the number of children entering the youth justice system for the first time and the use of child imprisonment have both shown marked declines. The pattern for children's proven reoffending is considerably less straightforward. The proportion of children with a formal youth justice sanction who reoffended within 12 months tended to rise between 2008 and 2015, from 37.1% to 42.6%, an increase of 5.5 percentage points. In the subsequent three years for which data are available, the recidivism rate has however shown a decline, from 42.8% to 38.4% in 2018 (Ministry of Justice / Youth Justice Board, 2020a). A standard narrative has tended to explain the escalation in reoffending in the earlier period in terms of what has been called the 'complexity thesis' (Bateman and Wigzell, 2019), the idea that the dramatic decline in the number of children entering the youth justice system has tended to filter out those with fewer needs and a lower propensity to offend, leading to a smaller youth justice cohort that poses a greater risk of recidivism. Taylor (2016: 7), for instance, described the current youth justice population as '*more difficult to rehabilitate*' and the Youth Justice Board (2015: 15), in the year that reoffending reached its highest point, confirmed that:

*'The young people who are left in the system now are the most challenging to work with. This was due to, among other reasons, more complex family backgrounds, more mental health issues, more group or gang offending and more serious youth violence'.*

Such an account is not inherently implausible but the logic of the position has not been followed consistently. Between 2000 and 2008, the rate of youth recidivism fell by 7.3 percentage points. It has been pointed out that this trend was a predictable outcome of net-widening, associated with the operation of the sanction detection target which, as described in chapter 3, operated between 2002 and 2008 with the effect that children whose behaviour would not previously have been thought to warrant a formal youth justice response were increasingly criminalised. As a consequence, the profile of the cohort in the latter year was not comparable to that of the 2000 baseline, since it was characterised by a substantially higher representation of girls, younger children and those processed for minor misdemeanours who

were less likely to reoffend. The comparison, on the basis of which claims of effectiveness were made, was thus unreliable. This lack of comparability notwithstanding, the government of the day was quick to claim the reduction in proven offending as evidence that their *'approach to youth crime was working'* (Department for Children, Schools and Families, 2010: 1). The subsequent appreciation that changes in the youth justice population can influence proven reoffending, might accordingly be thought a politically convenient mechanism to explain a failure to meet the target.

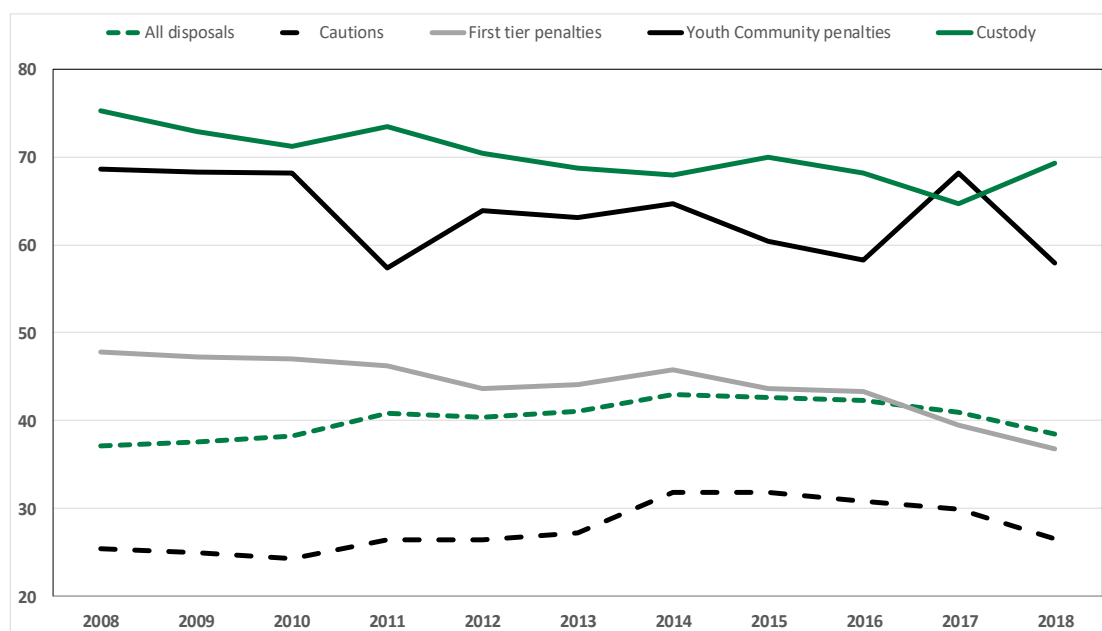
Expedient or not, the complexity thesis cannot be relied upon to account for the trajectory of recidivism over the most recent three years. As indicated above, the rate of reoffending fell between 2015 and 2018, by 4.4 percentage points, even though the throughput of the youth justice system continued to contract during that period, diverting in the process more children with lower levels of need. On closer inspection, it becomes evident that the complexity thesis cannot in any straightforward way account for the patterns shown in the earlier period either.

Recidivism varies according to the nature of sanction to which young people are subject: as shown in Figure 23, cautions are associated with the lowest level of reoffending which then rises in line with the level of intensity of disposal.

**Figure 23**

**Twelve month rate of proven reoffending by index disposal: 2008-2018**

Derived from Ministry of Justice / Youth Justice Board, 2020a: supplementary table 9.7



One would anticipate a correlation between disposals involving greater restrictions on liberty and increased rates of reoffending since children subject to community sentences and imprisonment are likely to be those whose offending is more serious or persistent. But once this is acknowledged, it highlights a potential difficulty in using recidivism to assess the impact of youth justice involvement because it is extremely difficult to disassociate the characteristics of children subject to a particular intervention from the effect of the intervention itself. For instance, it may be that part of the explanation for custody generating the highest level of reoffending is that incarceration is damaging to the child and exacerbates reoffending, relative to other forms of responses. Similarly, the fact that children subject to youth community penalties tend to reoffend at considerably higher levels than those subject to first-tier



penalties, may reflect, in part, the potentially negative impact of higher levels of formal criminal justice intervention associated with the former.

Previous analysis by the Ministry of Justice (2012) has confirmed that, when relevant factors are controlled for, lower-level community sentences are associated with significantly better reoffending outcomes than high intensity community-based disposals (recidivism rates are 4% lower for the former type of order). Moreover, children who receive custodial sentences of between six and twelve months are significantly more likely to reoffend than a comparison group sentenced to a high-level community penalty (again a four percentage point difference). It follows that the patterns shown in Figure 23 are not explicable purely in terms of the propensity of children subject to each disposal to reoffend since they are also a function of the ‘criminogenic’ nature of youth justice interventions themselves (as well as any benefit arising from support given to the child as part of the intervention). As the Taylor (2016: 4) review acknowledged:

*‘Evidence shows that contact with the criminal justice system can have a tainting effect on some children and can increase the likelihood of reoffending. Wherever possible minor crimes should be dealt with outside the formal youth justice system, and when a criminal justice response is required children should be dealt with at the lowest possible tier.’*

The Youth Justice Board’s commitment to the principle of minimal intervention, in National Standards, is thus a welcome departure from previous endorsements of early formal intervention. But as noted above, this commitment is as yet not supported by practice guidance which reinforces it.

Returning to Figure 23, if the relative variations in reoffending associated with different forms of intervention are in line with expectations, the trajectory shown for each type of disposal is potentially counterintuitive. It is, moreover, not obviously in accordance with the complexity thesis even for those years where the overall rate of recidivism was rising. From 2008 to 2014, proven reoffending tended to decline for custody, communities penalties and first-tier disposals. The modest rise over the same period in the overall level of recidivism is thus a product of an increase – of 6.4 percentage points – in respect of children subject to pre-court disposals. If reoffending rates were a reflection of the youth justice cohort becoming more challenging, one would anticipate rises across the whole range of disposals rather than just for cautions (Bateman and Wigzell, 2019).

Nor is it plausible to suggest that reductions in reoffending for more intensive interventions can be explained as a consequence of improvements in the quality of provision. This is particularly so in relation to custodial disposals in respect of which there is abundant evidence, outlined in chapter 8, that the experiences, and treatment, of imprisoned children have deteriorated sharply over the period in question and that resettlement outcomes are poor.

While considerations of space preclude a detailed rehearsal of the arguments, it has been proposed that a number of different factors might help to explain the various patterns exhibited in Figure 23 (Bateman and Wigzell, 2018). First, the trajectory for cautions up to 2014, is consistent with the complexity thesis. The increased diversion of children from the youth justice system might be expected to have a disproportionate impact on cautions since those committing relatively low level offences, or with no previous record of criminality, would be more likely candidates for informal diversionary measures, thereby raising the rate of recidivism for the remainder who continue to attract formal pre-court disposals.



Second, as noted in chapter 5, the contraction in the youth justice population has been associated with an increase in the average age of children in the youth justice system. This dynamic has been particularly marked in relation to children subject to community penalties and custodial sentences. This is significant given that children desist from offending as they mature, since an increase in the average age at which disposals are imposed will lead to the cohort being closer to the stage at which they will have begun the natural process of growing out of crime. Some empirical evidence for this supposition can be derived from the fact that, between 2008 and 2018, proven reoffending for 10-14 year-olds rose by 2.4 percentage points whereas that for children aged 15-17 years fell slightly, by 0.3 percentage points. Since children in the latter age group feature disproportionately among those subject to court orders, relative to cautions, there will be dampening impact on reoffending in respect of the former disposals. So far as custody is concerned, this dynamic has been amplified by the increase in the average length of imprisonment imposed, leading to sentence completion at a later chronological age. As indicated in Table 22, the reduction in recidivism associated with custody is particularly pronounced in relation to sentences of more than one year, suggesting an inverse correlation between age at release and further offending. (This is not to suggest that longer periods in custody are beneficial: the continued high rate of reoffending following all forms of imprisonment is indicative of the fact that incarceration, by comparison with community intervention, is likely to impede rather than promote, the natural process of desistance.)

**Table 22**

**Proven one year rates of reoffending for custodial disposals by sentence length: 2008 and 2018**

Derived from Ministry of Justice / Youth Justice Board, 2020a: supplementary table 9.8

Length of custodial sentence	Percentage reoffending within 12 months	
	2008	2018
6 months or less	78.6%	77.4%
More than 6 months to less than 12 months	76.8%	74.8%
12 months to less than 48 months	69%	59.9%

Finally, as demonstrated in Figure 16 above, children entering the youth justice system for the first time, are increasingly likely to leapfrog the cautioning stage altogether, and propelled into more intensive forms of sentencing. As a consequence, rates of reoffending for children subject to a community sentence have tended to decline because, contrary to the complexity thesis, that group *‘embodies a lower risk of reoffending because it includes a considerably higher proportion of FTEs than hitherto’* (Bateman and Wigzell, 2019).

The above discussion, if nothing else, attests to the fact that relying on proven reoffending as an indicator of effective youth justice practice is deeply flawed since rates of recidivism are mediated by a myriad of different dynamics. The ebb and flow of diversionary or interventionist standpoints to youth crime at different points in time, have a considerable bearing on statistical representations of detected offending and reoffending. Such standpoints also profoundly influence the demographic composition of the youth justice population, which is then further reflected in levels of recidivism as evidenced by the exposition in the above paragraphs.

Perhaps more pragmatically, the most frequently cited measure of reoffending is a binary ('yes'/'no' indicator), which records simply whether or not a child is reconvicted within a given period. This is an exceptionally blunt of that child's progress or lack thereof, since it is incapable of capturing changes in the nature, frequency, or gravity of their criminal activity. It ignores that fact that desistance is a, sometimes lengthy, process involving an attenuation of offending behaviour rather than an abrupt cessation (Weaver and McNeill, 2008; Gray, 2013).

There are also more philosophical criticisms that might be levelled at the present preoccupation with recidivism.

- The interaction between diversion and proven reoffending is such that filtering out of the system children with lower levels of need will tend, all things being equal, to be associated with higher levels of recidivism, as the complexity thesis maintains. Reducing FTEs and lowering rates of youth reoffending are contradictory aspirations. To the extent that youth justice practice is judged on performance against the latter, there will be inevitably be a perverse incentive to net-widen.
- If children naturally tend to grow out of crime, the proper role of youth justice intervention is to normalise offending behaviour, minimise stigmatisation, give children the space to mature and offer support that encourages the maturation process. Attempting to influence short-term recidivism is not obviously relevant to that endeavour, since evidence of real behavioural change is, in many cases, unlikely to emerge within 12 months and will take a variety of forms rather than simply whether or not the child continues, on occasion, to engage in delinquent activity.
- A focus on reoffending has the potential to be positively harmful: it leads to an identification of the child with his or her criminal behaviour, which is unhelpful in terms of fostering a non-delinquent identity; it detracts from establishing relationships of trust between staff and children directed towards shared goals; it limits the potential for engaging children in co-created supervision planning; and undermines interventions aimed at supporting longer-term developmental processes. Yet each of these is a hallmark of effective youth justice practice (McNeill, 2006).
- Most profoundly perhaps, equating success with the child refraining from breaking the criminal law over a 12 month is an extraordinarily narrow, and negative, ambition that serves to obscure the importance of working towards their longer-term wellbeing and healthy development. Counting failure cannot reasonably considered to be capturing what counts. Indeed, it is difficult to conceive of an indicator less in keeping with a *child first* ethos.

Avoiding what has been called the '*recidivism trap*' (Butts and Shiraldi, 2018) is accordingly central to any aspiration of remodelling youth justice as a *child first* endeavour. Such a shift would seek to align outcomes for children in conflict with the law more closely to those that pertain to other forms of, mainstream, provision for children where the promotion of stability, resilience and wellbeing is typically the central focus of intervention (see for instance, La Valle et al, 2019; for a recent attempt to develop measurable positive outcomes within a youth justice setting, see Paterson-Young et al, 2019). Such a shift would thus help to promote a *child first* youth justice that embraces children's rights, encourages participation, engages practitioners' skills in developing relationships and fostering agency, and looks to the longer-term wellbeing of vulnerable and disadvantaged children as the primary gauge of success.

## Chapter 10

# To the end

The adoption of a *child first* ethos as one of the strategic priorities of the Youth Justice Board is a significant and welcome development. In one sense, it might be understood as the natural culmination of a longer-term evolutionary process. The replacement of *Asset* by *AssetPlus*, for instance, represented an acknowledgement of the force of criticism of the risk-based, deficit, model on which the former had relied. The introduction of the FTE target involved the abandonment of practice predicated on an assumption of formal intervention at the first signs of behaviour that might infringe the law. Similarly, the establishment of a formal indicator to reduce child imprisonment embodied a recognition of the damaging impact of child incarceration and a rejection of the view that custody could, in the right circumstances, be a 'better sentence'. In fact, the endorsement of *child first* is more usefully viewed as being considerably more than the sum of these parts and as being qualitatively distinct from those earlier developments. While the individual changes outlined above have frequently been pragmatic responses to changed circumstances, or justified on the basis of effectiveness in reducing 'youth crime', the Board's commitment signifies an explicit break with the philosophical underpinnings of the Crime and Disorder Act 1998, which informed youth justice policy for at least the following two decades. Moreover, if the logical consequences of the new approach are consistently followed through, then *child first* also requires a radical shake up of youth justice practice and of the framework within which it is delivered.

In concrete terms, the balance sheet over the past three years is, from the perspective of the NAYJ, somewhat mixed. On the positive side, there have been continued, and unprecedented, falls in detected youth crime and – what is effectively the same thing – the criminalisation of children. The corresponding decline in child incarceration has also been sustained: the population of the children's secure estate is currently considerably smaller than the average secondary school. While the extent of the contraction has, to this point, been remarkable, a *child first* approach would seek to ensure further progress in respect of both these positive trends, particularly in the light of the evidence presented earlier in the report which suggests that there is scope for so doing. In this context, the apparent abandonment of targets to reduce the number of FTEs and the number of children in custody is something of a disappointment and may signify an element of (unwarranted) complacency in relation to current trends on the part of policy makers.

More generally, it is apparent that there remains a sizeable gap between the philosophical adherence to a *child first* 'brand', as the chair of the Board has put it, and the development of practice guidance that is consistent with the aspirations of that standpoint. To take just one example, while National Standards promote the benefits of 'minimal intervention' in the abstract, the import of such an approach is not readily discernible throughout the remainder of that document or in the more detailed guidance to which practitioners are referred. At the time of writing, case management guidance is being redrafted and there is accordingly potential for a closer alignment with a *child first* ethos. The publication in June 2020 of guidance on custody and resettlement provides an indication of how much change is required. The words 'child' and 'children' are used throughout and there are references to addressing the child's wellbeing, but a focus on risk also runs through the document. For example the

section on intensive supervision and surveillance indicates that such an intervention should only be included as a licence condition for a child:

*‘where such a stringent measure is felt to be reasonable and necessary to manage their risks’* (Youth Justice Board, 2020b).

There is a continued presumption of breach on a third failure to attend an appointment and the *‘Pathways to Resettlement’* document, which accompanies the guidance, records that ‘good case management’ involves:

*‘thorough multi-agency assessment of the risk factors associated with offending and the individual needs of each young person’* Youth Justice Board, 2020c).

There is a considerable danger that, unless the fundamental principles of a *child-first* approach are clearly, and consistently, embedded in guidance to the youth justice community, changes to practice will lag behind the policy rhetoric. This is particularly true given the evidence cited in the report that, in at least some areas, the delivery of youth justice services continues to be informed by an interventionist logic and a risk-orientated perspective that responsabilises individual children and defines them in terms of their criminal behaviour.

The ‘good news’ is also tempered by some other less encouraging features of the contemporary youth justice landscape. While most types of youth crime have fallen, there has been a rise in detected possession of knives, and a corresponding increase in the use of custodial disposals for such matters. The extent to which this trend represents a greater propensity for children to carry weapons or a growing policy focus on the issue, leading to increased formal reporting of such incidents to the police and tougher enforcement, is unclear. In either event, the figures are grounds for concern.

The strategic orientation of the police towards children in trouble has improved demonstrably in recent years. The reduction in the number of children subject to arrest is, in part, a manifestation of a now established tendency to deploy informal responses to children’s offending where formal sanctions would previously have been utilised. While this is clearly preferable to criminalisation, a lack of robust data precludes adequate monitoring of the extent, nature and effectiveness of such measures. Given the fall in FTEs for children from minority ethnic communities has been less pronounced than that for white children, there is a *prima facie* case for considering that the growing use of informal responses has contributed to disproportionality. It is apparent too that an array of inconsistent practices have developed in different areas, potentially limiting the scope for maximising diversionary possibilities. Improved monitoring would facilitate evaluation of different approaches while improving the accountability of agencies to ensure equitable treatment of children in trouble.

If considerably fewer children enter police custody, the treatment of those in police detention does not appear to have improved to the same degree: children frequently spend considerable periods of time without the support of an independent adult; and those refused bail nearly always remain at the police station overnight rather than being transferred to local authority accommodation as required by the legislation.

In spite of the rediscovery of diversion which underpins the most significant developments in the youth justice arena over the past decade or so, there is evidence of a tendency for children to ‘leapfrog’ the cautioning stage, effectively minimising the potential of the pre-court ‘tariff’ to keep children out of court. Where children are prosecuted, they are subject to increasing

delays, processed in a youth court which, for the most part, mirrors that designed to deal with adults, and where there has been a loss of child-specific expertise. Reform of the youth court – and the legal framework which allows large number of children to be tried in adult courts – has, in the view of the NAYJ been neglected for too long and requires expeditious review.

The revised sentencing guidelines, introduced in 2017, constituted a marked improvement on those they replaced and have now had time to bed in. It seems possible that they may have contributed to a continued decline in the use of imprisonment, but the Sentencing Council's admonition that courts, in considering the child's welfare, should have regard to the particular factors that arise for BAME children has not prevented increasing overrepresentation of minority groups. The further decline in custodial sentencing has moreover to be set against a worrying growth in the number of children subject to custodial remands. Tighter statutory limitations on the use of imprisonment for children are likely to be required to address such concerns and ensure that deprivation is genuinely a last resort for all children. The increasing use of more intensive community penalties is also a cause for disquiet, and testimony to the continued sway, among decision-makers, of interventionist assumptions and punitive undercurrents.

In 2017, the NAYJ described the treatment of children deprived of their liberty as '*entirely unacceptable*' (Bateman, 2017: 60). Dishearteningly, there are no grounds for dissenting from that assessment three years later. Indeed on at least some indicators, conditions within the secure estate for children have deteriorated appreciably in the interim period. Moreover, although the government has accepted, in principle, that YOIs and STCs should be closed, any movement towards that end has been wholly inadequate. There is still no timetable for the abolition of such establishments and progress towards opening a pilot secure school, reservations about that solution notwithstanding, has been painfully slow, suggesting an element of complacency on the part of the responsible authorities. Radical action to transfer all children from YOIs and STCs to secure children's homes, should be an urgent priority for any agency committed to a *child first* youth justice.

Perhaps the chief ground for unease on the negative side of the youth justice balance sheet is that the welcome developments of the last twelve or so years have not benefited all children to the same extent. As the youth justice system has contracted, the overrepresentation of minority ethnic children, in particular Black and mixed heritage children, has become more pronounced. More disturbingly, the extent of disproportionality has increasingly risen with the intensity of intervention: more than half of child currently deprived of their liberty derive from a minority background. Children in care are also more likely than their peers in the general population to be criminalised. Inequalities are evident too in the treatment of children from different backgrounds when they are detained in the secure estate. Although disproportionality, in its various guises, has received considerable attention in recent years, concrete action to address it has been limited and progress disappointingly hard to discern. The absence of improvement in this regard is one indicator of the distance to be travelled to the realisation of a *child first* youth justice. It raises pressing questions as to the ability of the youth justice system to provide justice for all children and casts a shadow that detracts from advances made in other areas.

Finally, it is important not to divorce youth justice from broader developments that affect poor and disadvantaged children in myriad ways. The rapid shift away from a reliance on formal sanctions to address children's troublesome behaviour has led, perhaps understandably, to a syphoning off of resources from youth justice services; but these have not been deployed to buttress, let alone improve, mainstream provision. This is particularly concerning given that

the capacity of wider service providers to deliver the personal and systematic support that disadvantaged children so badly require has simultaneously been gravely undermined as a consequence of austerity, and will inevitably be further constrained as a the longer-term corollary of the Covid 19 pandemic . Where the youth system withdraws intervention – albeit that such intervention is delivered through an offence-orientated lens - and suitable support is less available elsewhere, the prospect that youth crime will increase as opportunities for children from the most hard-pressed communities diminish, cannot be ruled out.

The *NAYJ* has previously cautioned that guarding against a sharp regressive shift, and the reversal of the advances of recent years, would require the adoption of a principled commitment to ensuring that youth justice services are directed towards maximising children's wellbeing and promoting their longer-term healthy development. The embracing of a *child first* ethos by the Youth Justice Board, a pivotal actor in determining the direction that responses to children in trouble take, is a critical first step towards that goal. The evidence adduced in this report, however, confirms that that there are many steps to climb: translating the philosophical aspiration into a concrete justice system that merits a *child first* appellation, will require radical reform of the legal and structural frameworks for the delivery of services to children in conflict with the law and a reconceptualisation of operational rationales. It particular, it will necessitate confronting, and displacing the punitive, risk-orientated, and deficit-focussed, undertones whose residues continue to influence the treatment of children who break the law.

## References

- Action for Children, Barnardo's, Children's Society, National Children's Bureau and NSPPC (2019) *Children and young people's services: funding and spending 2010/11 to 2017/18*, available at: [https://www.childrensociety.org.uk/sites/default/files/childrens-services-funding-csfa-briefing\\_final.pdf](https://www.childrensociety.org.uk/sites/default/files/childrens-services-funding-csfa-briefing_final.pdf)
- Acton, E (2013) 'Restorative justice a postcode lottery? – availability and quality of Service' in *Safer Communities* 14(3): 120-125
- Alcohol Concern (2016) *Alcohol in the system: an examination of alcohol and youth offending in London*. London: Trust for London, available at: [https://trustforlondon.fra1.digitaloceanspaces.com/media/documents/41447\\_AC\\_London\\_Alcohol\\_in\\_the\\_system\\_2-2.pdf](https://trustforlondon.fra1.digitaloceanspaces.com/media/documents/41447_AC_London_Alcohol_in_the_system_2-2.pdf)
- All Party Parliamentary Group for Children (2014) *'It's all about trust': building good relationships between children and the police*. London: National Children's Bureau, available at: [https://www.ncb.org.uk/sites/default/files/uploads/documents/Policy\\_docs/appgc\\_children\\_and\\_police\\_report\\_-\\_final.pdf](https://www.ncb.org.uk/sites/default/files/uploads/documents/Policy_docs/appgc_children_and_police_report_-_final.pdf)
- All Party Parliamentary Group for Children (2015) *Building trust: one year on. Progress in improving relationships between children and the police*. London: NCB, available at: [https://www.ncb.org.uk/sites/default/files/field/attachment/Its%20all%20about%20trust\\_Children%20and%20the%20Police\\_One%20Year%20On.pdf](https://www.ncb.org.uk/sites/default/files/field/attachment/Its%20all%20about%20trust_Children%20and%20the%20Police_One%20Year%20On.pdf)
- Allen, R (1991) 'Out of jail: the reduction in the use of penal custody for male juveniles 1981 – 1988' in the *Howard Journal for Penal Reform* 30(1): 30-52
- Allen, R (2011) *Last resort? Exploring the reduction in child imprisonment 2008-11*. London: Prison Reform Trust, available at: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/lastresort.pdf>
- Almond, T (2012) 'Asset: An assessment tool that safeguards or stigmatizes young offenders?' in *Probation journal* 59 (2): 138-150
- Alston, P (2018) Statement on Visit to the United Kingdom, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights. Geneva: United Nations, available at: [https://www.ohchr.org/Documents/Issues/Poverty/EOM\\_GB\\_16Nov2018.pdf](https://www.ohchr.org/Documents/Issues/Poverty/EOM_GB_16Nov2018.pdf)
- Anderson F, Worsley, R, Nunney, F, Maybanks, N and Dawes, W (2010) *Youth survey 2009: research study conducted for the Youth Justice Board for England and Wales*. London: Youth Justice Board, available at: <https://dera.ioe.ac.uk/2198/1/Ipsos%20MORI%20Youth%20Survey%202009.pdf>
- Andow, C and Byrne, B (2018) 'Family characteristics and experiences of children entering secure settings' in Bateman, T, Goodfellow, P, Little, R and Wigzell, A (eds) *Child-friendly youth justice?*. London: National Association for Youth Justice, 46-51, available at: <https://thenayj.org.uk/wp-content/uploads/2019/02/NAYJ-Child-friendly-youth-justice-May-18.pdf>
- Anton Sandøy, T (2020) 'Alternative (to) punishment: assessing punishment experiences in youth diversion programmes', in *British Journal of Criminology* 60(4): 911-929
- Argar, E (2019) *Medway secure training centre / secure school*. London: Ministry of Justice, available at: <https://article39.org.uk/wp-content/uploads/2019/03/65690-Minister-Argar-response-26-Feb.pdf>
- Article 39 (2020) *Ministers use Covid 19 to destroy children's safeguards*. News item 23 April 2020, available at: <https://article39.org.uk/news/>



- Aston, E (2015) 'Are risk factors for drug use and offending similar during the teenage years?' in *International Journal of Drug Policy* 26(4): 396-403
- Audit Commission (1996) *Misspent youth: young people and crime*. London: the Audit Commission
- Bachelor, S (2005) 'Prove me the bam!' Victimisation and agency in the lives of young women who commit violent crimes' in *Probation journal* 52(4): 358-375
- Baker, K (2014) *AssetPlus rationale*. London: Youth Justice Board, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/367782/AssetPlus\\_Rationale\\_revised\\_October\\_2014\\_1\\_0.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/367782/AssetPlus_Rationale_revised_October_2014_1_0.pdf)
- Bar Standards Board (2017) *Youth proceedings competences*. London: Bar Standards Board, available at: <https://www.barstandardsboard.org.uk/uploads/assets/197b7604-ac56-4175-b09476ec43ef188c/bsbyouthcompetencies2017forwebsite.pdf>
- Bateman, T (2005) 'Reducing child imprisonment: a systemic challenge' in *Youth Justice* 5(2): 91-105
- Bateman, T (2008) 'Target practice: sanction detection and the criminalisation of children' in *Criminal Justice Matters* 73(1): 2-4
- Bateman, T (2011) 'Punishing poverty: the scaled approach and youth justice practice' in *Howard Journal of Criminal Justice* 50(2): 171-183
- Bateman, T (2012a) 'Who Pulled the Plug? Towards an explanation of the fall in child Imprisonment in England and Wales' in *Youth Justice* 12(1) 36-52
- Bateman, T (2012b) *Criminalising children for no good purpose: the age of criminal responsibility in England and Wales*. London: NAYJ, available at: <https://thenayj.org.uk/wp-content/uploads/2015/06/2012-The-Age-of-Criminal-responsibility.pdf>
- Bateman, T (2013) *Detaining children at the police station: a failure to comply with legislation*. London: NAYJ, available at: <https://thenayj.org.uk/wp-content/uploads/2015/06/2013-Detaining-Children-at-the-PoliceStation.pdf>
- Bateman, T (2014) 'Where has all the youth crime gone? Youth justice in an age of austerity' in *Children and Society* 28(5): 416-424
- Bateman, T (2015) 'Trends in detected youth crime and contemporary state responses', in Goldson, B and Muncie, J (eds) *Youth crime and justice*. 2<sup>nd</sup> edition. London: Sage, 67-82
- Bateman, T (2016) *The state of youth custody*. London: NAYJ, available at: <https://thenayj.org.uk/wp-content/uploads/2016/10/NAYJ-Briefing-State-of-Youth-Custody-2016.pdf>
- Bateman, T (2017) *The state of youth justice 2017: an overview of trends and developments*. London: NAYJ, available at: <https://thenayj.org.uk/wp-content/uploads/2019/02/State-of-Youth-Justice-report-for-web-Sep17.pdf>
- Bateman, T (2020) 'Responding to youth offending: historical and current developments in practice' in Ugwu-dike, P, Raynor, P, McNeill, F, Taxman, F, Trotter, C, Graham, H (eds) *The Routledge Companion to Rehabilitative Work in Criminal Justice*. Abingdon: Routledge, 718-728
- Bateman, T, Day, AM and Pitts, J (2019) *Looked after children and custody: a brief review of the relationship between care status and child incarceration and the implications for service provision*. Luton: University of Bedfordshire, available at: <https://uobrep.openrepository.com/bitstream/handle/10547/623169/Nuffield-Literature-review-final.pdf?sequence=2&isAllowed=y>
- Bateman, T and Hazel, N (2013) *Engaging young people in resettlement. Research report*. London: Beyond Youth Custody, available at: <http://www.beyondyouthcustody.net/wp-content/uploads/Engaging-young-people-in-resettlement.pdf>

- Bateman, T and Hazel, N (2014) *Resettlement of girls and young women: research report*. London: Beyond Youth Custody, available at: [http://www.beyondyouthcustody.net/wp-content/uploads/421\\_research-report\\_04\\_8\\_w-front\\_cover.pdf](http://www.beyondyouthcustody.net/wp-content/uploads/421_research-report_04_8_w-front_cover.pdf)
- Bateman, T and Wigzell, A (2019) 'Exploring recent trends in youth justice reconvictions: a challenge to the complexity thesis' in *Youth Justice*, published online: October 23, 2019
- Bates, E (2015) 'Does place matter' in *Scottish justice matters* 3(3): 9 -10, available at: [http://scottishjusticematters.com/wp-content/uploads/SJM\\_3-3\\_November2015-Complete.pdf](http://scottishjusticematters.com/wp-content/uploads/SJM_3-3_November2015-Complete.pdf)
- Bell, A, Hodgson, M and Pragnell, S (1999) 'Diverting children and young people from crime and the criminal justice system' in Goldson, B (ed) *Youth Justice: contemporary policy and practice*. Aldershop: Ashgate
- Berridge, D, Brodie, I, Pitts, J, Porteous, D and Tarling, R (2001) *The independent effects of permanent exclusion from school on the offending careers of young people*. London: Home Office, available at: <http://troublesofyouth.pbworks.com/f/occ71-exclusion.pdf>
- Bevan, M (2019) Children and young people in police custody: an exploration of the experience of children and young people detained in police custody following arrest, from the perspective of the young suspect. PhD Thesis. London: London School of Economics, available at: [http://etheses.lse.ac.uk/3951/1/Bevan\\_Children-young-people-in-police-custody.pdf](http://etheses.lse.ac.uk/3951/1/Bevan_Children-young-people-in-police-custody.pdf)
- Brooks, F, Klemara, E, Chester, K, Magnusson, J and Spencer, N (2020) *HBSC England National Report: findings from the 2018 HBSC study for England*. Hatfield: University of Hertfordshire, available at: <http://hbscengland.org/wp-content/uploads/2020/01/HBSC-England-National-Report-2020.pdf>
- Brooks, S, Johnson, P, Clarke, S and Morton, L (2019) Youth Custody Service safeguarding
- Review. London: HM Prison and Probation Service / Youth Custody Service, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/836753/YCS\\_Safeguarding\\_Review.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/836753/YCS_Safeguarding_Review.pdf)
- Bunn, S and Brown, P (2018) *Age of criminal responsibility*. POSTnote 577. London: The Parliamentary Office for Science and Technology, available at: <https://post.parliament.uk/research-briefings/post-pn-0577/>
- Burnett, R and Maruna, S (2004) 'So prison works does it? The criminal careers of 130 men released from prison under Home Secretary, Michael Howard', in *Howard journal* 43(4): 390-404
- Burnett, R and McNeill, F (2005) 'The place of the officer-offender relationship in assisting offenders to desist from crime' in *Probation journal* 52(3): 221-242
- Burney, E. (2002) 'Talking tough, acting coy: what happened to the Anti-Social Behaviour Order?', In *Howard Journal of Criminal Justice* 41: 473–474
- Butler, M, McLaughlin, A, Hayes, D, and Percy, A. (2017) *Using the voluntary sector to provide services to children and families with complex needs as an alternative to social work services- what are the benefits and risks?* Belfast: Queens University Belfast, available at: [https://pureadmin.qub.ac.uk/ws/portalfiles/portal/148701378/Using\\_the\\_voluntary\\_sector\\_to\\_provide\\_services\\_to\\_children\\_and\\_families\\_with\\_complex\\_needs\\_Final\\_Report.pdf](https://pureadmin.qub.ac.uk/ws/portalfiles/portal/148701378/Using_the_voluntary_sector_to_provide_services_to_children_and_families_with_complex_needs_Final_Report.pdf)
- Butts, JA and Schiraldi, V (2018) The recidivism trap, available at: <https://www.themarshallproject.org/2018/03/14/the-recidivism-trap>
- Byrne, B and Brookes, K (2015) *Post-YOT youth justice*. Howard League What is Justice? Working Papers 19/2015. London: Howard League, available at: [http://howardleague.org/wp-content/uploads/2016/04/HLWP\\_19\\_2015.pdf](http://howardleague.org/wp-content/uploads/2016/04/HLWP_19_2015.pdf)
- Canton, R (2007) 'Probation and the tragedy of punishment' in *Howard Journal for Penal Reform* 46(3): 236-254

- Case, S and Haines, K (2009) *Understanding youth offending: risk factor research, policy and practice*. Cullompton: Willan
- Case, S and Haines, K (2015) 'Risk management and early intervention: a critical analysis' in Goldson, B and Muncie, J (eds) *Youth crime and justice*. 2<sup>nd</sup> edition. London: Sage, 100-119
- Centre for Mental Health (2019) *Liaison and diversion*, available at: <https://www.centreformentalhealth.org.uk/liaison-and-diversion>
- Centre for Social Justice (2012) *Rules of engagement: changing the heart of youth justice*. London: Centre for Social Justice, available at: [https://www.centreforsocialjustice.org.uk/core/wp-content/uploads/2016/08/CSJ\\_Youth\\_Justice\\_Full\\_Report.pdf](https://www.centreforsocialjustice.org.uk/core/wp-content/uploads/2016/08/CSJ_Youth_Justice_Full_Report.pdf)
- Child Rights International Network (undated) *The minimum age of criminal responsibility*, available at: <https://home.crin.org/issues/deprivation-of-liberty/minimum-age-of-criminal-responsibility>
- Child Rights International Network (2015) *Inhumane sentencing: life imprisonment of children around the world*. London: CRIN, available at: [https://archive.crin.org/sites/default/files/life\\_imprisonment\\_children\\_global\\_0.pdf](https://archive.crin.org/sites/default/files/life_imprisonment_children_global_0.pdf)
- Children's Commissioner for England (2017) *A night in the cells. Children in police custody and the provision of non-familial appropriate adults*. London: Children's Commissioner for England, available at: <https://www.childrenscommissioner.gov.uk/wp-content/uploads/2018/06/A-Night-in-the-Cells-Technical-Report.pdf>
- Children's Safeguarding Review Panel (2020) *It was hard to escape: safeguarding children at risk from criminal exploitation*. London: Children's Safeguarding Review Panel, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/870035/Safeguarding\\_children\\_at\\_risk\\_from\\_criminal\\_exploitation\\_review.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/870035/Safeguarding_children_at_risk_from_criminal_exploitation_review.pdf)
- Coleman, J (2011) *The nature of adolescence*. 4<sup>th</sup> edition. London: Routledge
- College of Policing (2017) *Authorised professional practice: Stop and search*. Modified September 2017, available at: <https://www.app.college.police.uk/app-content/stop-and-search/>
- College of Policing (2020) *Authorised professional practice: possible justice outcomes following investigation*. Modified February, 2020, available at: <https://www.app.college.police.uk/app-content/prosecution-and-case-management/justice-outcomes/#community-resolution-operational-considerations>
- Cooper, L (2019) *Spit-hoods and children's rights*. London: Children's Rights Alliance for England, available at: [https://yjlc.uk/wp-content/uploads/2020/04/CRAE\\_POLICING-SPITHOODS\\_PRINT.pdf](https://yjlc.uk/wp-content/uploads/2020/04/CRAE_POLICING-SPITHOODS_PRINT.pdf)
- Crawford, A and Newburn, T (2003) *Youth offending and restorative justice*. Cullompton: Willan
- Creaney, S (2014) 'The position of relationship based practice in youth justice' in *Safer Communities* 13(3): 120-125
- Criminal Justice Joint Inspections (2018) *Out-of-court disposal work in youth offending teams*. London: HM Inspectorate of Probation, available at: <https://www.justiceinspectorates.gov.uk/cji/wp-content/uploads/sites/2/2018/03/Out-of-court-disposal-work-in-youth-offending-teams-reportb.pdf>
- Crook, F (2020) *Pleased to get a positive response from the Charity Commission re my concerns that incarcerating children is not a charitable objective*, available at: <https://twitter.com/francescrook/status/1247829496369217536?s=12>
- Davies, B (2019) 'Breaching the social contract with young people' in *Youth and Policy* October 2019, available at: <https://www.youthandpolicy.org/articles/breaching-the-social-contract/>
- Day, AM, Bateman, T and Pitts, J (2020) *Surviving incarceration: the pathways of looked after and non-looked after children into, through and out of custody*. Luton: University of Bedfordshire, available at: <https://www.beds.ac.uk/media/271272/surviving-incarceration-final-report.pdf>

- Dearden, L (2020) 'Court backlog rockets to more than half a million cases in England and Wales during coronavirus' in *The Independent*, 20 June 2020, available at: <https://www.independent.co.uk/news/uk/home-news/court-case-delay-england-wales-coronavirus-lockdown-cps-a9577006.html>
- Deloitte (2015) *Youth offending team stocktake*. London: Ministry of Justice, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/445641/yot-stocktake-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/445641/yot-stocktake-report.pdf)
- Department for Children, Schools and Families (2007) *The Children's Plan: building brighter futures*. London: The Stationery Office, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/325111/2007-childrens-plan.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/325111/2007-childrens-plan.pdf)
- Department for Children, Schools and Families (2010) *Youth Crime Action Plan Update*. London: DCSF
- Department for Communities and Local Government (2011) *A plain English guide to the Localism Act*. London: Department for Communities and Local Government, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/5959/1896534.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/5959/1896534.pdf)
- Department for Education (2010) *Children accommodated in secure children's homes at 31 March 2010: England and Wales*. London: Department for Education, available at: <https://www.gov.uk/government/statistics/children-accommodated-in-secure-childrens-homes-at-31-march-2010-england-and-wales>
- Department for Education (2019a) *Children looked after in England including adoption: 2018 to 2019*. London: Department for Education, available at: <https://www.gov.uk/government/statistics/children-looked-after-in-england-including-adoption-2018-to-2019>
- Department for Education (2019b) *Children accommodated in secure children's homes at 31 March 2019: England and Wales*. London: Department for Education, available at: <https://www.gov.uk/government/statistics/children-accommodated-in-secure-childrens-homes-31-march-2019>
- Department for Education (2020) *Outcomes for children looked after by LAs: 31 March 2019*. London: Department for Education, available at: <https://www.gov.uk/government/statistics/outcomes-for-children-looked-after-by-local-authorities-31-march-2019>
- Disley, E, Taylor, C, Kruithof, K, Winpenny, E, Liddle, M, Sutherland, A, Lilford, R, Wright, S, McAteer, L and Francis, V (2016) *Evaluation of the Offender Liaison and Diversion trial schemes*. Cambridge: Rand Corporation, available at: [https://www.rand.org/content/dam/rand/pubs/research\\_reports/RR1200/RR1283/RAND\\_RR1283.pdf](https://www.rand.org/content/dam/rand/pubs/research_reports/RR1200/RR1283/RAND_RR1283.pdf)
- Drew, J (2020) *Waltham Forest Safeguarding Children Board: Serious Case Review. Child C, a 14 year old boy*. London: Waltham Forest Safeguarding Children Board, available at: <https://www.walthamforest.gov.uk/sites/default/files/WFSCB%20-%20SCR%20Child%20C%20May%20final.pdf>
- End Child Imprisonment (2019) *Principles and minimum expectations for children deprived of their liberty*. London: End Child Imprisonment, available at: <https://article39.org.uk/wp-content/uploads/2019/04/ECI-Principles-and-Minimum-Expectations-FINAL-pub-18-April-2019.pdf>
- Equality and Human Rights Commission (2010) *Stop and think: a critical review of the use of stop and search powers in England and Wales*. London: EHRC, available at: <https://www.equalityhumanrights.com/en/publication-download/stop-and-think-critical-review-use-stop-and-search-powers-england-and-wales>
- Estep, B (2014) *Youth diversion: YOT survey briefing*. London: New Economics Foundation, available at: [https://b3cdn.net/nefoundation/723971ec58a66af734\\_b2m6iydsu.pdf](https://b3cdn.net/nefoundation/723971ec58a66af734_b2m6iydsu.pdf)

- Evening Standard (2012) 'Rise of the violent ladette: girl gangs on rampage blamed on cheap booze', Tuesday 21 July 2012, available at: <https://www.standard.co.uk/news/uk/rise-of-the-violent-ladette-girl-gangs-on-rampage-blamed-on-cheap-booze-8069222.html>
- Fergusson, R (2013) 'Risk, responsibilities and rights: reassessing the 'economic causes of crime' thesis in a recession' in *Youth Justice* 13(1): 31–56.
- Fergusson, R (2016) *Young people welfare and crime: governing non-participation*. Bristol: Policy press
- FitzGerald, M, Hough, M, Joseph, I and Qureshi, T (2002) *Policing for London*. Cullompton: Willan
- Flanagan, R (2008) *The review of policing: final report*. Home Office, available at: <https://www.justiceinspectorates.gov.uk/hmicfrs/media/flanagan-review-of-policing-20080201.pdf>
- Ford, M (2020) *The pool of candidates for prison is increasing*. 1 July 2020. London: Centre for Crime and Justice Studies, available at: <https://www.crimeandjustice.org.uk/resources/pool-candidates-prison-increasing>
- France, A, Bottrell, D and Armstrong, D (2012) *A political ecology of youth and crime*. Basingstoke: Palgrave Macmillan
- Frazer, L (2020) Secure schools programme. Letter to Sir Bob Neill, Chair, Justice Select Committee, 17 June 2020, available at: <https://committees.parliament.uk/publications/1608/documents/15339/default/>
- Garside, R (2004) *Crime, persistent offenders and the justice gap*. London: Crime and Society Foundation, available at: <https://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/crime,%20persistent%20offenders.publication.pdf>
- Gelsthorpe, L (1989) *Sexism and the female offender*. Aldershot: Gower
- Gibbs, P and Ratcliffe, F (2018) *Path of little resistance: is pre-trial detention of children really a last resort?* London: Transform Justice, available at: [http://www.transformjustice.org.uk/wp-content/uploads/2018/12/TJ-December-2018-PRINT\\_V2-December.pdf](http://www.transformjustice.org.uk/wp-content/uploads/2018/12/TJ-December-2018-PRINT_V2-December.pdf)
- Gold Lagratta, E and Bowen, P (2014) *To be fair: procedural fairness in courts*. London: Criminal Justice Alliance, available at: <https://justiceinnovation.org/sites/default/files/media/documents/2019-03/to-be-fair-procedural-fairness-in-courts.pdf>
- Goldson, B (2000) 'Wither diversion? Interventionism and the New Youth Justice' in Goldson, B (ed) *The new youth justice*. Lyme Regis: Russell House publishing, 35-57
- Goldson, B (2002) 'New punitiveness: the politics of child incarceration' in Muncie, J, Hughes, G and McLaughlin, E (eds) *Youth Justice: critical readings*. London: Sage, 386-400
- Goldson, B (2010) 'The sleep of (criminological) reason: knowledge–policy rupture and New Labour's youth justice legacy' in *Criminology and Criminal Justice* 10(1): 155–178
- Goldson, B (2013) 'Unsafe, Unjust and Harmful to Wider Society': Grounds for Raising the Minimum Age of Criminal Responsibility in England and Wales' in *Youth Justice* 13(2): 111-130
- Goodfellow, P (2018) 'Child-friendly resettlement: difficult by definition?' in Bateman, T, Goodfellow, P, Little, R and Wigzell, A (eds) *Child-friendly youth justice?*. London: National Association for Youth Justice, 39-45, available at: <https://thenayj.org.uk/wp-content/uploads/2019/02/NAYJ-Child-friendly-youth-justice-May-18.pdf>
- Goodfellow, P (2019) *Outnumbered, locked up and over-looked? The use of penal custody for girls in England and Wales*. London: The Griffins Society, available at: <https://www.thegriffinsociety.org/outnumbered-locked-and-overlooked-use-penal-custody-girls-england-wales>



- Graham, H and McNeill, F (2020) 'Diversifying desistance research' in Ugwudike, P, Raynor, P, McNeill, F, Taxman, F, Trotter, C, Graham, H (eds) *The Routledge Companion to Rehabilitative Work in Criminal Justice*. Abingdon: Routledge, 104-115
- Gray, E (2013) *What happens to persistent and serious young offenders when they grow up? A follow-up study of the first recipients of Intensive Supervision and Surveillance*. London: Youth Justice Board, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/395969/issp-follow-up-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/395969/issp-follow-up-report.pdf)
- Gray, P (2020) 'Rights based and children and young people first approaches to youth justice' in Ugwudike, P, Raynor, P, McNeill, F, Taxman, F, Trotter, C, Graham, H (eds) *The Routledge Companion to Rehabilitative Work in Criminal Justice*. Abingdon: Routledge, 743-754
- Great Britain (2020) *The Secure Training Centre (Coronavirus) (Amendment) Rules 2020*. SI 2020/ 664. London: The Stationery Office, available at: <https://www.legislation.gov.uk/ukSI/2020/664/made>
- Green, L (2019) *Children in Custody 2017–18: an analysis of 12–18-year-olds' perceptions of their experiences in secure training centres and young offender institutions*. London: HM Inspectorate of Prisons, available at: <https://www.justiceinspectorates.gov.uk/hmiprison/inspections/children-in-custody-2017-18/>
- Griffiths, G and Norris, G (2020) 'Explaining the crime drop: contributions to declining crime rates from youth cohorts since 2005' in *Crime, Law and Social Change* 73:25–53
- Grimshaw, R and Ford, M (2018) *Young people, violence and knives - revisiting the evidence and policy discussions*. London: Centre for Crime and Justice Studies, available at: <https://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/Knife%20crime.%20November.pdf>
- Hagell, A, Hazel, N and Shaw, C (2000) *Evaluation of Medway secure training centre*. London: Home Office
- Hagell, A (2013) *Adolescent substance use*. Association for Young People's Health. Research Summary No 15. London: AYPH, available at: [https://www.youngpeopleshealth.org.uk/wp-content/uploads/2015/07/520\\_RU15-substance-use-summary.pdf](https://www.youngpeopleshealth.org.uk/wp-content/uploads/2015/07/520_RU15-substance-use-summary.pdf)
- Haines, A, Goldson, B, Haycox, A, Houten, R, Lane, S, McGuire, J, Nathan, T, Perkins, E, Richards, S and Whittington, R (2012) *Evaluation of the Youth Justice Liaison and Diversion (YJLD) pilot scheme: final report*. Liverpool: University of Liverpool, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/215118/dh\\_133007.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/215118/dh_133007.pdf)
- Haines, K, Case, S, Davies, K and Charles, A (2013) 'The Swansea Bureau: a model of diversion from the youth justice system' in *International Journal of Law, Crime and Justice* 41(2): 167-187
- Haines, K and Case, S (2015) *Positive youth justice: children first, offenders second*. Bristol: Policy press
- Haines, K and Drakeford, M (1998) *Young people and youth justice*. Basingstoke: MacMillan
- Hales, J, Nevill, C, Pudney, S and Tippin, S (2009) *Longitudinal analysis of the Offending, Crime and Justice Survey 2003–06*. Research report 19. London: Home Office, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/116611/horr19-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/116611/horr19-report.pdf)
- Hammersley, R (2008) *Drugs and crime: theories and practices*, Cambridge: Polity press
- Hampson, KS (2018) 'Desistance approaches to youth justice – the next passing fad or a sea change for the positive' in *Youth Justice* 18(1): 18-33
- Harding, S (2020) 'Getting to the point: reframing narratives on knife crime' in *Youth Justice* 20(1-20: 31-49)

- Hart, D (2012) *Legal Aid Sentencing and Punishment of Offenders Act 2012: implications for children*. London: NAYJ, available at: <http://thenayj.org.uk/wp-content/uploads/2015/06/2012-LASPO-Act.pdf>
- Hart, D (2014) *Pre-court arrangements for children who offend*. London: NAYJ, available at: [https://thenayj.org.uk/wp-content/uploads/2015/06/2014-NAYJ\\_briefing\\_Pre-court\\_arrangementsFeb14.pdf](https://thenayj.org.uk/wp-content/uploads/2015/06/2014-NAYJ_briefing_Pre-court_arrangementsFeb14.pdf)
- Hart, D (2017) The 'transformation' of youth custody: a discussion paper. London: NAYJ, available at: <https://thenayj.org.uk/wp-content/uploads/2019/02/NAYJ-Briefing-Transformation-of-Youth-Custody-May17.pdf>
- Hart, D (2018) "Transforming' youth custody?" in Bateman, T, Goodfellow, P, Little, R and Wigzell, A (eds) *Child-friendly youth justice?* London: National Association for Youth Justice, 52-56, available at: <https://thenayj.org.uk/wp-content/uploads/2019/02/NAYJ-Child-friendly-youth-justice-May-18.pdf>
- Hart, D and Thompson, C (2009) *Young people's participation in the youth justice system*. London: National Children's Bureau, available at: <https://www.ncb.org.uk/sites/default/files/field/attachment/participationinyouthjusticereport.pdf>
- Hay, C and Forest, W (2009) 'The implication of family poverty for a pattern of persistent offending' in Savage, J (ed) *The development of persistent criminality*. Oxford: Oxford University press
- Hazel, N with Goodfellow, P, Liddle, M, Bateman, T and Pitts, J (2017) "Now all I care about is my future": supporting the shift. *Framework for the effective resettlement of young people leaving custody*. London: Beyond Youth Custody, available at: <http://www.beyondyouthcustody.net/wp-content/uploads/Now-all-I-care-about-is-my-future-Supporting-the-shift-full-research-report.pdf>
- Hine, J and Celnick, A (2001) *A one year reconviction study of final warnings*. Sheffield: University of Sheffield
- Hirschi, T and Gottfredson, M (1983) 'Age and the explanation of crime', in *American Journal of Sociology* 89 (3), 552-584
- HM Chief Inspector of Prisons (2017) *Annual Report 2016-17*. London: HMIP available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/629719/hmip-annual-report-2016-17.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/629719/hmip-annual-report-2016-17.pdf)
- HM Chief Inspector of Prisons (2019) *Annual Report 2018-19*. London: HMIP available at: [https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2019/07/6.5563\\_HMI-Prisons-AR\\_2018-19\\_WEB\\_FINAL\\_040719.pdf](https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2019/07/6.5563_HMI-Prisons-AR_2018-19_WEB_FINAL_040719.pdf)
- HM Government (2003) *Every child matters*. London: The Stationery Office, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/272064/5860.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/272064/5860.pdf)
- HM Government (2008) *Youth crime action plan*. London: HM Government, available at: <https://webarchive.nationalarchives.gov.uk/http://www.justice.gov.uk/publications/docs/youth-crime-action-plan.pdf>
- HM Government (2018) *Serious violence strategy*. London: The Stationery Office, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/698009/serious-violence-strategy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698009/serious-violence-strategy.pdf)
- HM Government (2019) *Policy initiatives contributing to the promotion, protection and realisation of children's rights*. London: HM Government, available at: <https://www.ohchr.org/Documents/HRBodies/CRC/30Anniversary/Pledges/UK.pdf>
- HM Inspectorate of Constabulary (2013) *Stop and search powers: are the police using them effectively and fairly?* London: HMIC, available at: <https://www.justiceinspectorates.gov.uk/hmicfrs/media/stop-and-search-powers-20130709.pdf>



HM Inspectorate of Constabulary (2014) *Crime-recording: making the victim count. The final report of an inspection of crime data integrity in police forces in England and Wales*. London: HMIC, available at: <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/crime-recording-making-the-victim-count.pdf>

HM Inspectorate of Constabulary (2015) *The welfare of vulnerable people in police custody*. London: HMIC, available at: <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/the-welfare-of-vulnerable-people-in-police-custody.pdf>

HM Inspectorate of Constabulary and Fire and Rescue Services (2020) *Report on an unannounced inspection visit to police custody suites in Leicestershire*. London: HMCFRS, available at: <https://www.justiceinspectorates.gov.uk/hmicfrs/publications/leicestershire-police-joint-inspection-of-police-custody/>

HM Inspectorate of Prisons (2020a) *Separation of children in young offender institutions: a thematic review*. London: HM Inspectorate of Prisons, available at: <https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2020/01/Separation-of-children-thematic-Web-2019.pdf>

HM Inspectorate of Prisons (2020b) *Report on an unannounced inspection of HMYOI Cookham Wood*. London: HM Inspectorate of Prisons, available at: <https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2020/02/Cookham-Wood-web-2019.pdf>

HM Inspectorate of Prisons (2020c) *Report on short scrutiny visits to young offender institutions holding children*. London: HM Inspectorate of Prisons, available at: <https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2020/05/YOIs-SSV-Web-2020-1.pdf>

HM Inspectorate of Prisons / HM Inspectorate of Probation (2019) Youth resettlement work

Interim report into work in custody. London: HM Inspectorate of Prisons, available at: <https://www.justiceinspectorates.gov.uk/cji/wp-content/uploads/sites/2/2019/08/Youth-resettlement-work-Web-2019.pdf>

HM Inspectorate of Probation (2011) *Who's looking out for the children? A joint inspection of Appropriate Adult provision and children in detention after charge*. Manchester: HMIP, available at: <https://www.justiceinspectorates.gov.uk/hmicfrs/media/whos-looking-out-for-the-children-2011215.pdf>

HM Inspectorate of Probation (2012) *It's complicated: the management of electronically monitored curfews*. Manchester: HM Inspectorate of Probation, available at: <https://www.justiceinspectorates.gov.uk/probation/wp-content/uploads/sites/5/2014/03/electronic-monitoring-report-2012.pdf>

HM Inspectorate of Probation (2015) *Joint thematic inspection of resettlement services to children by youth offending teams and partner agencies*. Manchester, England: HM Inspectorate of Probation, available at: [https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2015/03/Youth-Resettlement\\_report.pdf](https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2015/03/Youth-Resettlement_report.pdf)

HM Inspectorate of Probation (2016) *Referral orders - do they achieve their potential?* Manchester: HM Inspectorate of Probation, available at: <https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2016/07/Referral-orders-do-they-achieve-their-potential.pdf>

HM Inspectorate of Probation (2018) *Standards for inspecting youth offending services*. Manchester: HMIP, available at: <https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2018/04/Youth-offending-standards-March-18-final.pdf>

Home Affairs Committee (2007) *Young Black people and the criminal justice system*. London: House of Commons, available at: <https://publications.parliament.uk/pa/cm200607/cmselect/cmhaff/181/181i.pdf>

- Home Office (1985) *The cautioning of offenders*. Circular 14/85. London: Home Office
- Home Office (1994) *The cautioning of offenders*. Circular 18/94. London: Home Office
- Home Office (1997) *No More Excuses: a new approach to tackling youth crime in England and Wales*. London: Home Office, available at: <https://webarchive.nationalarchives.gov.uk/+/http://www.homeoffice.gov.uk/documents/jou-no-more-excuses?view=Html>
- Home Office (2002) *Narrowing the justice gap framework*. London: Home Office
- Home Office (2003) *Youth justice: the next steps*. London: Home Office
- Home Office (2016) *Annual Anti-social Behaviour Order (ASBO) statistics*. London: Home Office, available at: <https://data.gov.uk/dataset/25c0f3c0-e21e-4028-aaef-1981404e1825/annual-anti-social-behaviour-order-asbo-statistics>
- Home Office (2019a) *Knife Crime Prevention Orders: guidance*. London: Home Office, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/825387/KCPO\\_Draft\\_Framework\\_Guidance\\_final\\_2019\\_08\\_14.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/825387/KCPO_Draft_Framework_Guidance_final_2019_08_14.pdf)
- Home Office (2019b) *Crime outcomes in England and Wales: year ending March 2019*. Statistical Bulletin HOSB 12/19 London: Home Office, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/817769/crime-outcomes-hosb1219.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817769/crime-outcomes-hosb1219.pdf)
- Home Office (2019c) *Police powers and procedures, England and Wales, year ending 31 March 2019*. London: Home Office, available at: <https://www.gov.uk/government/statistics/police-powers-and-procedures-england-and-wales-year-ending-31-march-2019>
- Home Office (2019d) *Greater powers for police to use stop and search to tackle violent crime*. Press release, 31 March 2019, available at: [www.gov.uk/government/news/greater-powers-for-police-to-use-stop-and-search-to-tackle-violent-crime](http://www.gov.uk/government/news/greater-powers-for-police-to-use-stop-and-search-to-tackle-violent-crime)
- Home Office (2019e) *Crime outcomes in England and Wales 2018 to 2019*. London: Home Office, available at: <https://www.gov.uk/government/statistics/crime-outcomes-in-england-and-wales-2018-to-2019>
- Home Office (2020a) *National Referral Mechanism Statistics. UK, end of year summary, 2019*. London: Home Office, available at: <https://www.gov.uk/government/statistics/national-referral-mechanism-statistics-uk-end-of-year-summary-2019>
- Home Office (2020b) *Police Powers: pre-charge bail. Government consultation*, London: Home Office, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/879759/20191127\\_ConDoc\\_PCB\\_May.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/879759/20191127_ConDoc_PCB_May.pdf)
- Home Office / Youth Justice Board (2002) *Final Warning Scheme: guidance for the police and youth offending teams*. London: Home Office, available at: <https://webarchive.nationalarchives.gov.uk/+/http://www.homeoffice.gov.uk/documents/final-warning-scheme.pdf?view=Binary>
- House of Commons Library (2020) *Constituency data: Magistrates' court closures*. Published 13 May 2020, available at: <https://commonslibrary.parliament.uk/local-data/constituency-data-magistrates-court-closures/>
- Howard League for Penal Reform (2016) *Criminal care: children's homes are criminalising children*. London: Howard League, available at: <https://howardleague.org/publications/criminal-care/>
- Howard League for Penal Reform (2018) *Howard League for Penal Reform's submission to the consultation on the draft national standards for youth justice*. London: Howard League available at: <https://howardleague.org/wp-content/uploads/2018/11/Howard-League-submission-to-consultation-on-draft-national-standards-for-youth-justice.pdf>

- Howard League for Penal Reform (2020) *Children in prison during the Covid-19 pandemic*. London: Howard League, available at: <https://howardleague.org/publications/children-in-prison-during-the-covid-19-pandemic/>
- Hunter, G, Ely, C, Robin-D'Cruz, C and Whitehead, S (2020) *Time to get it right: enhancing problem-solving practice in the youth court*. London: Centre for Justice Innovation, available at: <https://justiceinnovation.org/publications/time-get-it-right-enhancing-problem-solving-practice-youth-court>
- Institute for Criminal Policy Research (2012) *Assessing young people in police custody: an examination of the operation of Triage schemes*. London: Home Office, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/116265/occ106.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/116265/occ106.pdf)
- Janes, L (2018) 'Why a participatory, rights-based approach is the best way to protect children in trouble with the law' in Bateman, T, Goodfellow, P, Little, R and Wigzell, A (eds) *Child-friendly youth justice?* London: National Association for Youth Justice, 34-38, available at: <https://thenayj.org.uk/wp-content/uploads/2019/02/NAYJ-Child-friendly-youth-justice-May-18.pdf>
- Jay, A, Evans, M, Frank, I and Sharpling, D (2019) *Sexual abuse of children in custodial institutions: 2009–2017*. London: IICSA, available at: <https://www.iicsa.org.uk/publications/investigation/custodial>
- Jones, D (2001) "'Misjudged Youth": a critique of the Audit Commission's reports on youth Justice', in *British Journal of Criminology* 41(2): 362-380
- Judicial College (2020) *Youth court bench book*. London: Judicial College, available at: <https://www.judiciary.uk/wp-content/uploads/2020/06/Youth-Court-Bench-Book-June-2020.pdf>
- Justice Committee (2020) *Oral evidence: Coronavirus (Covid-19): The impact on prison, probation and court systems*, 2 June 2020, available at: <https://committees.parliament.uk/oralevidence/443/pdf/>
- Keeling, P (2017) *No respect: young BAME men, the police and stop and search*. London: Criminal Justice Alliance, available at: <http://criminaljusticealliance.org/wp-content/uploads/2017/06/No-Respect-290617.pdf>
- Kelly, L (2012) 'Representing and preventing youth crime: intended and unintended consequences of targeted youth programmes in England' in *Youth Justice* 12(2):101-117
- Kelly, P (2008) 'Net-widening' in Goldson, B (ed) *Dictionary of youth justice*. Cullompton: Willan, 244-245
- Kelly, L and Armitage, V (2015) 'Diverse diversions: youth justice reform, localised practice and a 'new interventionist diversion'' in *Youth Justice* 15(2): 117-133
- Khan, L and Wilson, J (2015) *'You just get on and do it': healthcare provision in youth offending teams*. London: Mental Health Foundation, available at: <http://www.ohrn.nhs.uk/resource/policy/Justgetonanddoit.pdf>
- Kingston, S and Webster, C (2016) 'The most 'undeserving' of all? How poverty drives young men to victimisation and crime' in *Journal of Poverty and Social Justice* 23(3), 215-227
- Knuutila, A (2010) *Punishing costs: how locking up children is making Britain less safe*. London: New Economics Foundation, available at: <https://neweconomics.org/2010/03/punishing-costs>
- Khan, L, Brice, H, Saunders, A and Plumtree, A (2013) *A need to belong: what leads girls to join gangs*. London: Centre for Mental Health, available at: [https://www.centreformentalhealth.org.uk/sites/default/files/2018-09/A\\_need\\_to\\_belong.pdf](https://www.centreformentalhealth.org.uk/sites/default/files/2018-09/A_need_to_belong.pdf)
- Kinsey, L (2019) *'Youth knife crime' in context: adolescents beyond objects of concern*. London: National Association for Youth Justice, available at: <https://thenayj.org.uk/wp-content/uploads/2019/05/Youth-knife-Crime-Briefing-May-191.pdf>

- Kushing, K (2014) 'Diversion from prosecution for young people in England and Wales: reconsidering the mandatory admission criteria' in *Youth Justice* 14(2): 140-153
- La Valle, I, Hart, D and Holmes, L with Pinto, VS (2019) How do we know if children's social care services make a difference? Development of an outcomes framework. Oxford: University of Oxford, available at: <http://www.education.ox.ac.uk/wp-content/uploads/2019/07/CSCS-Outcomes-Framework-July-2019.pdf>
- Lacey, N and Zedner, L (2017) 'Criminalisation: historical, legal, and criminological perspectives' in Liebling, A, Maruna, S and McAra, L (eds) *The Oxford Handbook of Criminology* 6th edition. Oxford: Oxford University Press, 57-76
- Lammy, D (2017) *An independent review into the treatment of, and outcomes for Black, Asian and Minority Ethnic individuals in the criminal justice system*. London: Ministry of Justice, available at: <https://www.gov.uk/government/publications/lammy-review-final-report>
- Law Society (2019) *Release under investigation*, available at: <https://www.lawsociety.org.uk/policy-campaigns/campaigns/criminal-justice/release-under-investigation/>
- Lepper, J (2020) 'Medway secure school launch in doubt, warn YOT managers' in *Children and Young People Now*, Wednesday, March 4, 2020
- Lightowlers, C (2019) 'Drunk and doubly deviant? The role of gender and intoxication in sentencing assault offences' in the *British Journal of Criminology* 59(3): 693–717
- Little, R (2015) 'Putting education at the heart of custody? The views of children on education in a Young Offender Institution' in *The British Journal of Community Justice* 13 (2): 27-46
- Little, R (2020) 'Paying the price: consequences for children's education in prison in a market society', in *International Journal of Educational Development* 27, published online June 2020
- Lloyd, J and Firmin, C (2020) 'No further action: contextualising social care decisions for children victimised in extra-familial settings' in *Youth Justice* 20(1-2): 79-92
- Longfield, A (2020) *Anne Longfield responding to reports on the use of restraint and the use of separation in youth custody*, 18 June 2020. London: Children's Commissioner for England, available at: <https://www.childrenscommissioner.gov.uk/2020/06/18/anne-longfield-responding-to-reports-on-the-use-of-restraint-and-the-use-of-separation-in-youth-custody/>
- Lord Carlile (2014) *Independent Parliamentarians' inquiry into the operation and effectiveness of the youth court*. London: Micheal Sieff foundation, available at: [http://michaelsieff-foundation.org.uk/content/inquiry into the operation and effectiveness of the youth court-uk-carlile-inquiry.pdf](http://michaelsieff-foundation.org.uk/content/inquiry%20into%20the%20operation%20and%20effectiveness%20of%20the%20youth%20court-uk-carlile-inquiry.pdf)
- Lord Justice Auld (2001) *A review of the criminal courts of England and Wales*. London: The Stationery Office, available at: <https://webarchive.nationalarchives.gov.uk/+http://www.criminal-courts-review.org.uk/ccr-00.htm>
- Lord Laming (2016) *In care, out of trouble: how the life chances of children in care can be transformed by protecting them from unnecessary involvement in the criminal justice system*. London: Prison Reform Trust, available at: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/In%20care%20out%20of%20trouble%20summary.pdf>
- Mackie, K, Cattell, J, Reeder, N and Webb, S (2104) *Youth restorative intervention evaluation: final report*. London: Social Impact Analytics
- Maguire, M (1998) 'Effects of the PACE provisions on detention and questioning' in *British Journal of Criminology* 28(1): 19-43
- Maruna S and Farrall S (2004) 'Desistance from crime: A theoretical reformulation' in *KolnerZeitschrift fur Soziologie und Sozialpsychologie* 43: 171–194

- Maruna, S and Roy, KM (2007) 'Amputation or reconstruction? Notes on the concept of "knifing off" and desistance from crime' in *Journal of Contemporary Criminal Justice* 23(1):104-124
- May, T, Gyateng, T and Bateman, T (2010) *Exploring the needs of young Black and Minority Ethnic offenders and the provision of targeted interventions*. London: Youth Justice Board, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/354686/yjb-exploring-needs-young-black-minority-ethnic-offenders.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/354686/yjb-exploring-needs-young-black-minority-ethnic-offenders.pdf)
- May, T, Gyateng, T and Hough, M (2010) *Differential treatment in the youth justice system*. London: Equality and Human Rights Commission, available at: [https://www.equalityhumanrights.com/sites/default/files/research\\_report\\_50\\_differential\\_treatment\\_in\\_the\\_youth\\_justice\\_system.pdf](https://www.equalityhumanrights.com/sites/default/files/research_report_50_differential_treatment_in_the_youth_justice_system.pdf)
- McAra, L (2018) 'Child-friendly youth justice?' in Bateman, T, Goodfellow, P, Little, R and Wigzell, A (eds) *Child-friendly youth justice?*. London: National Association for Youth Justice, 5-14, available at: <https://thenayj.org.uk/wp-content/uploads/2019/02/NAYJ-Child-friendly-youth-justice-May-18.pdf>
- McAra, L and McVie, S (2010) 'Youth crime and justice: key messages from the Edinburgh Study of Youth Transitions and Crime' in *Criminology and Criminal Justice* 10(2): 179-209
- McAra, L and McVie, S (2015) 'The case for diversion and minimum necessary intervention' in Goldson, B and Muncie, J (eds) *Youth crime and justice*, 2<sup>nd</sup> edition. London: Sage, 119-136
- McAra, L and McVie, S (2016) 'Understanding youth violence: The mediating effects of gender, poverty and vulnerability' in *Journal of Criminal Justice* 45(C), pages 71-77
- McAra, L and McVie, S (2018) 'Evidencing the case for diversion' in Goldson, B (ed) *Juvenile Justice in Europe: past, present and future*. Abingdon: Routledge
- McKee, C (2014) *Crime outcomes in England and Wales 2013/14*. Home Office Statistical Bulletin 1/14. London: Home Office, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/331597/hosb0114.pdf.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/331597/hosb0114.pdf.pdf)
- McNeill, F (2006) 'Community supervision: context and relationship matters' in Goldson, B and Muncie, J (eds) *Youth crime and justice*. London: Sage, 125-138
- McNeill, F (2009) 'Supervising young offenders: what works and what's right?' in Barry, M and McNeill, F (eds) *Youth offending and youth justice*. London: Jessica Kingsley, 132-153
- McNeill, F (2014) *Three aspects of desistance* available at: <http://blogs.iriss.org.uk/discoveringdesistance/2014/05/23/three-aspects-of-desistance/>
- McNeill, F and Graham, H (2020) 'Conceptualizing rehabilitation; four forms, two models, one process and a plethora of challenges' in Ugwudike, P, Raynor, P, McNeill, F, Taxman, F, Trotter, C, Graham, H (eds) *The Routledge Companion to Rehabilitative Work in Criminal Justice*. Abingdon: Routledge, 10-19
- Millie, A (2009) *Anti-social behaviour*. Maidenhead: Open University press
- Ministry of Justice (2010) *Breaking the Cycle: effective punishment, rehabilitation of offenders and sentencing*. London: the Stationery Office, available at: <https://webarchive.nationalarchives.gov.uk/20111206103817/http://www.justice.gov.uk/consultations/docs/breaking-the-cycle.pdf>
- Ministry of Justice (2012) *2012 compendium of reoffending statistics and analysis*. London: Ministry of Justice, available at: <https://www.gov.uk/government/statistics/compendium-of-reoffending-statistics-and-analysis>
- Ministry of Justice (2013) *Criminal Justice Statistics 2012*. London: Ministry of Justice, available at: <https://www.gov.uk/government/statistics/criminal-justice-statistics-quarterly-update-to-december-2012>



- Ministry of Justice (2014) *Criminal Justice Statistics 2013*. London: Ministry of Justice, available at: <https://www.gov.uk/government/statistics/criminal-justice-statistics-quarterly-december-2013>
- Ministry of Justice (2016) *The government response to Charlie Taylor's Review of the youth justice system*. London: Ministry of Justice available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/576553/youth-justice-review-government-response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/576553/youth-justice-review-government-response.pdf)
- Ministry of Justice (2018) *Our secure schools vision*. London: Ministry of Justice, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/712904/secure-schools-vision.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/712904/secure-schools-vision.pdf)
- Ministry of Justice (2019a) *Global education charity to run UK's first secure school*. Press release, 1 July 2019. London: Ministry of Justice, available at: <https://www.gov.uk/government/news/global-education-charity-to-run-uk-s-first-secure-school>
- Ministry of Justice (2019b) *Criminal Justice Statistics 2018*. London: Ministry of Justice, available at: <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2018>
- Ministry of Justice (2020a) *Criminal Justice Statistics 2019*. London: Ministry of Justice, available at: <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2019>
- Ministry of Justice (2020b) *A guide to youth justice statistics*. London: Ministry of Justice, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/861646/guide-to-youth-justice-statistics.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/861646/guide-to-youth-justice-statistics.pdf)
- Ministry of Justice (2020c) *Knife and offensive weapon sentencing statistics: October to December 2019*. London: Ministry of Justice, available at: <https://www.gov.uk/government/statistics/knife-and-offensive-weapon-sentencing-statistics-october-to-december-2019>
- Ministry of Justice (2020d) *Offender management statistics – October to December 2019*. London: Ministry of Justice, available at: <https://www.gov.uk/government/collections/offender-management-statistics-quarterly>
- Ministry of Justice / HM Prisons and Probation Service (2020) *Guidance: Coronavirus (COVID-19) and prisons*, available at: <https://www.gov.uk/guidance/coronavirus-covid-19-and-prisons#changes-to-regimes>
- Ministry of Justice / Youth Justice Board (2012) *Youth justice statistics 2010/11: England and Wales*. London: Ministry of Justice, available at: <https://www.gov.uk/government/collections/youth-justice-statistics>
- Ministry of Justice / Youth Justice Board (2013a) *Youth out-of-court disposals: guide for police and youth offending services*. London: Youth Justice Board, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/438139/out-court-disposal-guide.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/438139/out-court-disposal-guide.pdf)
- Ministry of Justice / Youth Justice Board (2013b) *Payment and cost recovered arrangements in respect of children detained on remand in youth detention accommodation*. London: Ministry of Justice, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/414608/payment-cost-recovery-arrangements.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/414608/payment-cost-recovery-arrangements.pdf)
- Ministry of Justice / Youth Justice Board (2017a) *Summary of responses to the MOJ and YJB survey on youth justice: prevention of offending*. London: Ministry of Justice
- Ministry of Justice / Youth Justice Board (2017a) *Key characteristics of admissions to youth custody: April 2014 to March 2016*. England and Wales. London: Youth Justice Board, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/585991/key-characteristics-of-admissions-april-2014-to-march-2016.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/585991/key-characteristics-of-admissions-april-2014-to-march-2016.pdf)



- Ministry of Justice / Youth Justice Board (2018a) *Youth justice statistics 2018/19: England and Wales*. London: Ministry of Justice, available at: <https://www.gov.uk/government/collections/youth-justice-statistics>
- Ministry of Justice / Youth Justice Board (2018b) *Referral order guidance: October 2018*. London: Ministry of Justice, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/746365/referral-order-guidance-9-october-2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/746365/referral-order-guidance-9-october-2018.pdf)
- Ministry of Justice / Youth Justice Board (2019) *Standards for children in the youth justice system 2019*. London: Youth Justice Board, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/780504/Standards for children in youth justice services 2019.doc.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/780504/Standards_for_children_in_youth_justice_services_2019.doc.pdf)
- Ministry of Justice / Youth Justice Board (2020a) *Youth justice statistics 2018/19: England and Wales*. London: Ministry of Justice, available at: <https://www.gov.uk/government/collections/youth-justice-statistics>
- Ministry of Justice / Youth Justice Board (2020b) *Assessing the needs of sentenced children in the youth justice system 2018/19*. London: Youth Justice Board, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/887644/assessing-needs-of-sentenced-children-youth-justice-system.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/887644/assessing-needs-of-sentenced-children-youth-justice-system.pdf)
- Morgan, R (2009) 'The quiet revolution: the rise and rise of out-of-court summary justice' in *Criminal Justice Matters* 75: 5-6, available at: <https://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/09627250802699640.pdf>
- Morgan Harris Burrows (2008) *Evaluation of the youth inclusion programme – phase 2*. London: Youth Justice Board
- Motz, RT, Barnes, JC, Caspi, A, Arseneault, L, Cullen, FT, Houts, R, Wertz, J and Moffitt, TE (2020) 'Does contact with the justice system deter or promote future delinquency? Results from a longitudinal study of British adolescent twins' in *Criminology* 58(2): 307-335
- Myers, R (2013) 'The biographical and psychic consequences of 'welfare inaction' for young women in trouble with the law' in *Youth Justice* 13(3): 218-33
- Muncie, J (2008) 'The 'punitive turn' in juvenile justice: cultures of control and rights compliance in Western Europe and the USA' in *Youth Justice* 8(2):107-121
- Muncie, J (2015) *Youth and crime*. 4<sup>th</sup> edition. London: Sage
- Nacro (1987) *Time for change: a new framework for dealing with juvenile crime and offenders*. London: Nacro
- Nacro (2000) *Factors associated with differential rates of youth custodial sentencing*. London: Youth Justice Board
- Nacro (2002) *Children who commit grave crimes*. London: Nacro
- Nacro (2003a) *A failure of justice: reducing child imprisonment*. London: Nacro
- Nacro (2003b) *The sentencing framework for children and young people*. Youth crime briefing. London: Nacro
- Nacro (2008) *Responding to girls in the youth justice system*. Youth crime briefing. London: Nacro
- Nacro (2007) 'Grave crimes', *mode of trial and long term detention*. Youth crime briefing. London: Nacro
- Nacro (2009) *Some facts about children and young people who offend - 2007*. Youth crime briefing. London: Nacro, available at: <https://www.bl.uk/collection-items/some-facts-about-children-and-young-people-who-offend--2007>
- Nacro (2010) *The youth rehabilitation order*. Youth crime briefing. London: Nacro

- National Association for Youth Justice (2011) *For a child friendly youth justice system*. London: NAYJ, available at: <https://thenayj.org.uk/wp-content/uploads/2015/06/2012-A-child-focused-Youth-Justice-System.pdf>
- National Association for Youth Justice (2019) *National Association for Youth Justice: manifesto 2019/20*. London: NAYJ, available at: <https://thenayj.org.uk/manifesto-2019-final.pdf>
- Nagin, DS (2013) 'Deterrence in the twenty first century' in *Crime and Justice* 42(1): 199-263
- National Audit Office (2010) *The youth justice system in England and Wales: reducing offending by young people*. London: The Stationery Office, available at: <https://www.nao.org.uk/wp-content/uploads/2010/12/1011663.pdf>
- National Crime Agency (2020) *National strategic assessment of serious and organised crime 2020*. London: National Crime Agency, available at: <https://www.nationalcrimeagency.gov.uk/who-we-are/publications/437-national-strategic-assessment-of-serious-and-organised-crime-2020/file>
- National Police Chief's Council (2015) *National strategy for the policing of children and young people*, available at: <https://www.npcc.police.uk/documents/edhr/2015/CYP%20Strategy%202015%202017%20August%202015.pdf>
- Newbury, A (2011a) 'Very young offenders and the criminal justice system: are we asking the right questions?' in *Child and Family Law Quarterly* 23(1): 94-114
- Newbury, A (2011b) 'I would have been able to hear what they think': tensions in achieving restorative outcomes in the English youth justice system' in *Youth Justice* 11(3): 250-265
- NHS Digital (2019) *Smoking, Drinking and Drug Use among Young People in England 2018*. London: Office for National Statistics, available at: <https://digital.nhs.uk/data-and-information/publications/statistical/smoking-drinking-and-drug-use-among-young-people-in-england/2018>
- Nitfed (1985) *Report of the National Intermediate Treatment Federation's Sheffield Conference 1985*. Sheffield: Nitfed
- Nugent, B and McNeill, F (2017) 'Young people and desistance' in Furlong, A (ed) *Routledge handbook of youth and young adulthood*. 2<sup>nd</sup> edition. Abingdon: Routledge, 411-420
- Observer (2017) 'Stop and search won't help to beat knife crime, Met chief is told' in the Observer newspaper, 20 May 2017, available at: <https://www.theguardian.com/uk-news/2017/may/20/stop-and-search-cressida-dick-knife-crime>
- Office for National Statistics (2019) *Reasons for not reporting crime to the police, year ending March 2018 Crime Survey for England and Wales*. London: ONS, available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/adhocs/010096reasonsforreportingcrimetothepoliceyearendingmarch2018crimesurveyforenglandandwales>
- Office for National Statistics (2020a) *User guide to crime statistics for England and Wales*. London: ONS, available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/methodologies/userguidetocrimestatisticsforenglandandwales#perceptions>
- Office for National Statistics (2020b) *Crime in England and Wales: year ending December 2019*. London: Office for National Statistics, available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/crimeinenglandandwales/yearendingdecember2019#measuring-the-data>
- Palasinski, M (2013) 'Security, respect and culture in British teenagers' discourses of knife carrying', in *Safer Communities* 12(2):71-78

- Paterson-Young, C, Hazenberg, R, and Bajwa-Patel, M (2019) *The social impact of custody on young people in the criminal justice system*. London: Palgrave Macmillan
- Pearson, G (1983) *Hooligans: a history of respectable fears*. London: Palgrave
- Petrosino, A, Turpin-Petrosino, C and Guckenberg, S (2013) *Formal system processing of juveniles: effects on delinquency*, Campbell Systematic Reviews. Washington DC: U.S. Department of Justice, available at: [http://www.antonioacasella.eu/restorative/Petrosino\\_feb2013.pdf](http://www.antonioacasella.eu/restorative/Petrosino_feb2013.pdf)
- Phoenix, J (2009) 'Beyond risk assessment: the return of repressive welfarism' in Barry, M and McNeill, F (eds) *Youth offending and youth justice*. London: Jessica Kingsley, 113-131
- Pidd, H (2019) 'Children as young as 10 waiting more than a year for court cases' in *The Guardian*, 4 November 2019, available at: <https://www.theguardian.com/society/2019/nov/04/children-young-as-10-waiting-more-than-year-court-cases>
- Pidd, H, Halliday, J, Wolfe-Robinson, M and Parveen (2020) 'Youth justice: exposing a system that is failing our most vulnerable children' in *The Guardian*, 13 June 2020, available at: <https://www.theguardian.com/membership/2020/jun/13/youth-justice-exposing-a-system-that-is-failing-our-most-vulnerable-children>
- Pierson, P (1994) *Dismantling the welfare state? Reagan, Thatcher and the politics of retrenchment*. Cambridge: Cambridge University press
- Pitts, J (2000) 'The New Youth Justice and the politics of electoral anxiety' in Goldson, B (ed) 1-13
- Pitts, J (2001a) 'Korrectional Karaoke: New Labour and the zombification of youth justice' in *Youth Justice* 1(2): 3-16
- Pitts, J (2001b) *The new politics of youth crime: discipline or solidarity*. Lyme Regis: Russell House publishing
- Pitts, J (2003) *The new politics of youth crime*. Lyme Regis: Russell House publishing
- Pitts, J (2008) *Reluctant gangsters: the changing face of youth crime*. Cullompton: Willan
- Pragnell, S (2005) 'Reprimands and final warnings' in Bateman, T and Pitts, J (eds) *The RHP Companion to youth justice*. Lyme Regis: Russell House publishing, 77-82
- Puffett, N (2019) 'MoJ confirms delay to secure school opening' in *Children and Young People Now*, Friday, November 8, 2019
- Rix, A, Skidmore, K, Self, R, Holt, T, and Raybould, S (2011) *Youth restorative disposal process evaluation*. London: Youth Justice Board
- Roberts, M, Buckland, G and Redgrave, H (2019) *Examining the youth justice system: what drove the falls in first time entrants and custody, and what should we do as a result?* London: Crest Advisory, available at: [https://static.wixstatic.com/ugd/b9cf6c\\_69afbe28369544c7bca350229d0be59f.pdf](https://static.wixstatic.com/ugd/b9cf6c_69afbe28369544c7bca350229d0be59f.pdf)
- Robin-D'Cruz, C (2020) *Young people's voices on youth court*. London: Centre for Justice Innovation, available at: <https://justiceinnovation.org/publications/young-peoples-voices-youth-court>
- Robinson, A (2014) *Foundations for youth justice: positive approaches to practice*. Bristol: Policy press
- Rosa, G, King, L, Stevens, M and Smith, L (2019) *State of children's rights in England 2018: policing and criminal justice*. London: Children's Rights Alliance for England, available at: [http://www.crae.org.uk/media/127098/B8\\_CRAE\\_POLICINGCJ\\_2018\\_WEB.pdf](http://www.crae.org.uk/media/127098/B8_CRAE_POLICINGCJ_2018_WEB.pdf)
- Rose, N (1999) *Governing the soul. The shaping of the private self*. 2nd edition. London: Free Association Books

- Ross, A, Duckworth, D, Smith, DJ, Wyness, G and Schoon, I (2011) *Prevention and reduction: a review of strategies for intervening early to prevent or reduce youth crime and anti-social behaviour*. London: Department for Education, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/182548/DFE-RR111.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/182548/DFE-RR111.pdf)
- Rutherford, A (1992) *Growing out of crime: the new era*. Winchester: Waterside press
- Sands, C, Twite, J and Stacey, C (2018) 'How can England and Wales achieve a child friendly criminal record disclosure system?' In Bateman, T, Goodfellow, P, Little, R and Wigzell, A (eds) *Child-friendly youth justice?* London: National Association for Youth Justice, 29-33, available at: <https://thenayj.org.uk/wp-content/uploads/2019/02/NAYJ-Child-friendly-youth-justice-May-18.pdf>
- Sabbagh, M (2017) *Restorative justice and Black, Asian and minority ethnic children in the youth justice system*. London: Restorative Justice Council, available at: [https://restorativejustice.org.uk/sites/default/files/resources/files/BAME\\_Research%20ReportFinal%20%281%29.pdf](https://restorativejustice.org.uk/sites/default/files/resources/files/BAME_Research%20ReportFinal%20%281%29.pdf)
- Schur, E (1973) *Radical non-intervention: rethinking the delinquency problem*. Englewood Cliffs: Prentice Hall
- Sentencing Council (2017a) *Sentencing children and young people: overarching principles and offence specific guidelines for sexual offences and robbery: definitive guideline*. London: Sentencing Council, available at: <https://www.sentencingcouncil.org.uk/wp-content/uploads/Sentencing-Children-and-Young-People-definitive-guideline-Web.pdf>
- Sentencing Council (2017b) *Children and young people – overarching principles and offence specific guidelines for sexual offences and robbery: response to consultation*. London: Sentencing Council
- Sharpe, D (2005) *Serve and protect: Black young people's experience of policing in the community*. London: The Children's Society, available at: [https://www.childrenssociety.org.uk/sites/default/files/tcs/research\\_docs/Just%20justice%20serve%20%26%20protect%20-%20Black%20young%20people%27s%20experience%20of%20policing%20in%20the%20community.pdf](https://www.childrenssociety.org.uk/sites/default/files/tcs/research_docs/Just%20justice%20serve%20%26%20protect%20-%20Black%20young%20people%27s%20experience%20of%20policing%20in%20the%20community.pdf)
- Sharpe, G (2012) *Offending girls: young women and youth justice*. London: Routledge
- Sharpe, G (2016) 'Re-imagining justice for girls: a new agenda for research' in *Youth Justice* 16(1): 3-17
- Sharpe, G and Gelsthorpe, L (2015) 'Girls crime and justice' in in Goldson, B and Muncie, J (eds) *Youth crime and justice*. 2nd edition. London: Sage, 49-64
- Sheil, F and Breidenbach-Roe, R (2014) *Payment by Results and the voluntary sector*. London: NCVO, available at: [https://www.ncvo.org.uk/images/documents/about\\_us/media-centre/payment-by-results-and-the-voluntary-sector-april-2014.pdf](https://www.ncvo.org.uk/images/documents/about_us/media-centre/payment-by-results-and-the-voluntary-sector-april-2014.pdf)
- Silvestri, A (2009) *Partners or prisoners? Voluntary sector independence in the world of commissioning and contestability*. London: Centre for Crime and Justice Studies, available at: <https://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/Partners%20or%20prisoners%20report.pdf>
- Smith, D (2004) *The links between victimization and offending*. Edinburgh: University of Edinburgh, available at: <https://www.edinstudy.law.ed.ac.uk/wpcontent/uploads/sites/36/2019/10/5Victimization.pdf>
- Smith, D (2006) *Social inclusion and early desistance from crime*. Report number 12 of the Edinburgh Study of Youth Transitions and Crime. Edinburgh: University of Edinburgh, available at: <https://www.edinstudy.law.ed.ac.uk/wp-content/uploads/sites/36/2019/10/12Desistance.pdf>
- Smith, D and McAra, L (2004) *Gender and youth offending*. Edinburgh: Edinburgh Study of Youth Transitions and Crime, available at: <https://www.edinstudy.law.ed.ac.uk/wp-content/uploads/sites/36/2019/10/2Gender.pdf>

- Smith, DJ and Ecob, R (2007) 'An investigation into causal links between victimization and offending in adolescents' in *British Journal of Sociology* 58(4):633-59
- Smith, N and Hughes, T (2019) *'There is no protection on the streets, none': young people's perspectives on knife crime*. London: All Party Parliamentary Group on Knife Crime, available at: <https://www.barnardos.org.uk/sites/default/files/uploads/APPG%20on%20Knife%20crime%20-%20Young%20people%27s%20perspective%20August%202019.pdf>
- Smith, R (2014) *Youth justice: ideas, policy, practice*. 3<sup>rd</sup> edition. Abingdon: Routledge
- Smith, R (2014b) 'Re-inventing diversion' in *Youth Justice* 14(2):109-121
- Smith, R (2020) 'Diversion, rights and social justice' in *Youth Justice*, published online February 2020
- Smith, R and Gray, P (2019) 'The changing shape of youth justice: models of practice' in *Criminology and Criminal Justice* 19(5): 554-571
- Smith, V and Wynne-McHardy, E (2019) *An analysis of indicators of serious violence Findings from the Millennium Cohort Study and the Environmental Risk (E-Risk) Longitudinal Twin Study*. Research report 110. London: Home Office, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/819840/analysis-of-indicators-of-serious-violence-horr110.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819840/analysis-of-indicators-of-serious-violence-horr110.pdf)
- Smyth, G 'What have we done right?' Targets and youth crime prevention' in *British Journal of Community Justice* 8(1): 31-39
- Solanki, AR, Bateman, T, Boswell, G and Hill, E (2006) *Anti-social behaviour orders*. London: Youth Justice Board. A summary of the full report is available at: [http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/02\\_11\\_06\\_asbo\\_summary.pdf](http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/02_11_06_asbo_summary.pdf)
- Sourdin, T and Burstyn, N (2016) 'Justice delayed is justice denied', in SSRN e-library, available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2721531](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2721531)
- Squires, P (2008) 'The politics of anti-social behaviour' in *British Politics* 3: 300–323
- Stacey, C (2019) *Double discrimination? The impact of criminal records on people from black, Asian and minority ethnic backgrounds*. London: Unlock, available at: <https://www.unlock.org.uk/wp-content/uploads/Double-discrimination-Full-report-July-2019.pdf>
- Stafford, H (2019) 'The price is rights!: Cost benefit analysis and the resourcing of children's services' in *Children and youth services review* 99: 395-407
- Steinberg, S, Cauffman, E and Monahan, KC (2015) *Psychosocial maturity and desistance from crime in a sample of serious juvenile offenders*. Washington: Office of Juvenile Justice and Delinquency Prevention, available at: <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/248391.pdf>
- Staines, J (2016) *Risk, adverse influence and criminalisation: understanding the over-representation of looked after children in the youth justice system*. London: Prison Reform Trust, available at: [http://www.prisonreformtrust.org.uk/Portals/0/Documents/risk\\_adverse\\_influence\\_criminalisation\\_lit\\_review\\_lo.pdf](http://www.prisonreformtrust.org.uk/Portals/0/Documents/risk_adverse_influence_criminalisation_lit_review_lo.pdf)
- Standing Committee for Youth Justice (2017) *Growing up, Moving on A report on the childhood criminal records system in England and Wales*. London: SCYJ, available at: <http://scyj.org.uk/wp-content/uploads/2017/07/Growing-Up-Moving-on-A-report-on-the-childhood-criminal-record-system-in-England-and-Wales.pdf>
- Standing Committee for Youth Justice (2020) *Ensuring custody is the last resort for children in England and Wales*. London: Standing Committee for Youth Justice, available at: <http://scyj.org.uk/2020/06/ensuring-custody-is-a-last-resort-new-scyj-report/>



- Straw, J (1997) 'Preface by Home Secretary' in Home Office *No More Excuses: a new approach to tackling youth crime in England and Wales*. London: Home Office, available at: <https://webarchive.nationalarchives.gov.uk/+http://www.homeoffice.gov.uk/documents/jou-no-more-excuses?view=Html>
- Sutherland, A, Disley, A, Cattell, J and Bauchowitz, S (2017) *An analysis of trends in first time entrants to the youth justice system*. London: Ministry of Justice, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/653182/trends-in-fte-to-the-youth-justice-system.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/653182/trends-in-fte-to-the-youth-justice-system.pdf)
- Taflan, P and Jalil, R (2020) *Children in custody 2018–19: an analysis of 12–18-year-olds' perceptions of their experiences in secure training centres and young offender institutions*. London: HM Inspectorate of Prisons, available at: <https://www.justiceinspectorates.gov.uk/hmiprison/inspections/children-in-custody-2018-19/>
- Taylor, C (2016) *Review of the youth justice system in England and Wales*. London: Ministry of Justice, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/577103/youth-justice-review-final-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/577103/youth-justice-review-final-report.pdf)
- Taylor, C (2020) *A review of the use of pain-inducing techniques in the youth secure estate*. London: Ministry of Justice, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/893193/charlie-taylors-review-pain-inducing-techniques.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/893193/charlie-taylors-review-pain-inducing-techniques.pdf)
- The Traveller Movement (2016) *Overlooked and overrepresented: Gypsy, Traveller and Roma children in the youth justice system. An analysis of 12-18-year-olds' Gypsy, Traveller and Roma perceptions of their experiences in secure training centres and young offender institutions*. London: The Traveller Movement, available at: <https://travellermovement.org.uk/phocadownload/userupload/criminal-justice/Overlooked-and-Overrepresented-Gypsy-Traveller-and-Roma-children-in-the-youth-justice-system.pdf>
- Tombs, S and Whyte, D (2003) 'Unmasking the crimes of the powerful' in *Critical criminology* 11: 217-236
- Trotter, C (2020) 'Effective supervision of young offenders' in in Ugwudike, P, Raynor, P, McNeill, F, Taxman, F, Trotter, C, Graham, H (eds) *The Routledge Companion to Rehabilitative Work in Criminal Justice*. Abingdon: Routledge, 755-765
- Tyler, T (2003) 'Procedural justice, legitimacy, and the effective rule of law' in *Crime and Justice* 30: 283-357
- Uhrig, N (2016) *Black, Asian and minority ethnic disproportionality in the criminal justice system in England and Wales*. London: Ministry of Justice, available at: <https://www.gov.uk/government/publications/black-asian-and-minority-ethnic-disproportionality-in-the-criminal-justice-system-in-england-and-wales>
- UK Youth (2020) *The impact of COVID-19 on young people and the youth sector*. London: UK Youth, available at: <https://www.ukyouth.org/wp-content/uploads/2020/04/UK-Youth-Covid-19-Impact-Report-External-Final-08.04.20.pdf>
- UN Committee on the Rights of the Child (2008) *Concluding observations -United Kingdom of Great Britain and Northern Ireland*. Geneva: UNCRC, available at: <http://www.crae.org.uk/media/26705/UK-CRC-Final-COs-2008.pdf>
- UN Committee on the Rights of the Child (2016) *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*, Geneva: United Nations, available at: <https://www.unicef.org.uk/babyfriendly/wp-content/uploads/sites/2/2016/08/UK-CRC-Concluding-observations-2016-2.pdf>



- UN Committee on the Rights of the Child (2019) *General comment No. 24 (2019) on children's rights in the child justice system*. Geneva: United Nations, available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CRC%2fC%2fG%2f24&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CRC%2fC%2fG%2f24&Lang=en)
- Unison (2016) *A future at risk: cuts in youth services*. London: Unison, available at: <https://www.unison.org.uk/content/uploads/2016/08/23996.pdf>
- United Nations (1989) *Convention on the Rights of the Child*. Geneva: United Nations, available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>
- United Nations (2015) United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules). Geneva: United Nations, available at: <https://cdn.penalreform.org/wp-content/uploads/1957/06/ENG.pdf>
- Weaver, B (2013) 'Co-producing desistance: what works to support desistance' in Durnescu, I and McNeill, F (eds) *Understanding penal practice*. Abingdon: Routledge, 193-205
- Weaver, B and McNeill, F (2008) 'Desistance' in Goldson, B (ed) *Dictionary of youth justice*. Cullompton: Willan, 132-134
- Webster, C (2015) "'Race", crime and youth justice' in Goldson, B and Muncie, J (eds) *Youth crime and justice*. London: Sage, 31-48
- Wells, P (2007) 'New Labour and evidence based policy making: 1997-2007' in *People, place and policy* 1(1): 22-29
- White, R and Cunneen, C (2015) 'Social class, youth crime and youth justice' in Goldson, B and Muncie, J (eds) *Youth crime and justice*. London: Sage, 17-30
- Wigzell, A (2014) 'Moving Beyond the ASBO? A review of the proposed anti-social behaviour measures and their implications for children' in *Safer Communities* 13(3): 73-82
- Wigzell, A, Kirby, A and Jacobson, J (2015) *The youth proceedings advocacy review: final report*. London: Institute for Criminal Policy Research, available at: <https://www.barstandardsboard.org.uk/uploads/assets/8ce6f0eb-5583-4e4a-8f24f1d530eef1d7/yparfinalreportfinal.pdf>
- Willow, C and 35 others (2019) *Medway secure training centre / Secure school*. Open letter to Edward Argar, Parliamentary Under Secretary of State for Justice and Nadhim Zahawi, Parliamentary Under Secretary of State for Children and Families, 5 February 2019 available at: <https://article39.org.uk/wp-content/uploads/2019/03/Medway-STC-secure-school-joint-open-letter-5-Feb-2019.pdf>
- Windle, J, Moyle, L and Coomber, R (2020) "'Vulnerable' kids going country': children and young people's involvement in county lines drug dealing' in *Youth Justice* 20(1-2): 64-78
- Wood, A, Bailey, S and Butler, R (2017) *Findings and recommendations of the Youth Custody Improvement Board*. London: Youth Custody Improvement Board available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/594448/findings-and-recommendations-of-the-ycib.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/594448/findings-and-recommendations-of-the-ycib.pdf)
- Wood, M (2005) *The victimisation of young people: findings from the Crime and Justice Survey 2003*. Findings 246. London: Home Office, available at: <http://library.college.police.uk/docs/hofindings/r246.pdf>
- Worrall, A (2001) 'Girls at risk? Reflections on changing attitudes to young women's offending' in *Probation journal* 48(2): 86-92
- Yates, J (2010) 'Structural disadvantage, youth, class, crime and poverty' in Taylor, W, Earle, R and Hester, R (eds) *Youth Justice handbook: theory, policy and practice*. Cullompton: Willan, 5-22
- Youth Custody Service (2020) *Monthly youth custody data. April 2020*. London: Ministry of Justice

- Youth Justice Board (2000b) 'Detention and training order: a better sentence' in *Youth Justice Board News*. June 2000. London: Youth Justice Board
- Youth Justice Board (2013) *National Standards for Youth Justice Services April 2013*. London: Youth Justice Board, available at: [https://www.basw.co.uk/system/files/resources/basw\\_30236-6\\_0.pdf](https://www.basw.co.uk/system/files/resources/basw_30236-6_0.pdf)
- Youth Justice Board (2014) *YJB Corporate Plan 2014–17 and Business Plan 2014/15*. London: Youth Justice Board, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/356456/yjb\\_corporate\\_plan\\_2014\\_2017\\_business\\_plan\\_2014\\_15.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/356456/yjb_corporate_plan_2014_2017_business_plan_2014_15.pdf)
- Youth Justice Board (2015) *Youth offending teams: making the difference for children and young people, victims and communities*. London: Youth Justice Board, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/445271/Board\\_Visits\\_Final\\_Report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/445271/Board_Visits_Final_Report.pdf)
- Youth Justice Board (2016) *Participation strategy: giving young people a voice in youth justice*. London: Youth Justice Board
- Youth Justice Board (2018) *Strategic plan 2018-2021*. London: Youth Justice Board, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/706925/201804\\_YJB\\_Strategic\\_Plan\\_2018\\_21\\_Final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/706925/201804_YJB_Strategic_Plan_2018_21_Final.pdf)
- Youth Justice Board (2019a) *How to use reports: section 5 case management guidance*. Updated 18 April 2019. London: Youth Justice Board available at: <https://www.gov.uk/government/publications/how-to-use-reports/how-to-use-reports-section-5-case-management-guidance>
- Youth Justice Board (2019b) *Business plan 2019-2020*. London: Youth Justice Board, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/802705/YJB\\_business\\_plan\\_2019\\_to\\_2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/802705/YJB_business_plan_2019_to_2020.pdf)
- Youth Justice Board (2019c) *How to use out-of-court disposals: section 1 case management guidance*. London: Youth Justice Board, available at: <https://www.gov.uk/government/publications/how-to-use-out-of-court-disposals/how-to-use-out-of-court-disposals-section-1-case-management-guidance>
- Youth Justice Board (2019d) *The journey of the child*. London: Youth Justice Board, available at: <https://www.gov.uk/government/news/the-journey-of-the-child>
- Youth Justice Board (2019e) *How to use community interventions: section 6 case management guidance*. London: Youth Justice Board, available at: <https://www.gov.uk/government/publications/how-to-use-community-interventions/how-to-use-community-interventions-section-6-case-management-guidance>
- Youth Justice Board (2020a) *Business Plan 2020/21*. London: Youth Justice Board, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/884764/YJB\\_Business\\_Plan\\_2020-21.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/884764/YJB_Business_Plan_2020-21.pdf)
- Youth Justice Board (2020b) *Custody and resettlement: section 7 case management guidance*. London: Youth Justice Board, available at: <https://www.gov.uk/government/publications/custody-and-resettlement/custody-and-resettlement-section-7-case-management-guidance>
- Youth Justice Board (2020c) *Pathways to Resettlement*. London: Youth Justice Board, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/799838/Section\\_7\\_annex\\_Pathways\\_to\\_Resettlement\\_v2\\_0\\_final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/799838/Section_7_annex_Pathways_to_Resettlement_v2_0_final.pdf)
- Youth Justice Legal Centre (2020) *Timely Justice: Turning 18*. London: Youth Justice Legal Centre, available at: <https://justforkidslaw.org/what-we-do/fighting-change/campaigning/youth-justice/timely-justice-turning-18>
- Zedner, L (2007) 'Pre-crime and post-criminology?' in *Theoretical criminology* 11(2): 261-281